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Colorado (Ter.) Laws, statutes, etc.

"

THE

REVISED STATUTES

OF

COLORADO

447/667

AS PASSED AT THE

SEVENTH SESSION OF THE LEGISLATIVE ASSEMBLY,

CONVENED ON THE SECOND DAY OF DECEMBER, A. D. 1867.

ALSO, THE

ACTS OF A PUBLIC NATURE PASSED AT THE SAME SESSION, AND THE PRIOR LAWS STILL IN FORCE.

TOGETHER WITH

THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, AND THE AMENDMENTS THERETO.

PUBLISHED BY AUTHORITY.

CENTRAL CITY:
PRINTED BY DAVID C. COLLIER, AT THE REGISTER OFFICE.
1868.

Law
Colo. (Ter.)
2
1868

NOTE.—*The within compilation is believed to contain all of the Statutes of the Territory, of a general and public nature, now remaining in force, except those enumerated in the notes at the foot of Chapter XLI. Those Statutes which were passed at the seventh session of the Legislative Assembly, in addition to the Revised Statutes, are indicated by the title and the enacting clause prefixed thereto, and will be found under the appropriate chapters of the revision, or under the title of Miscellaneous Laws.*

E. T. WELLS.

July 15*th*, 1868.

P.
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10 N [illegible]

TERRITORY OF COLORADO, } ss.
SECRETARY'S OFFICE, }

I, FRANK HALL, Secretary of Colorado Territory, do hereby certify that I have delivered to DAVID C. COLLIER, Public Printer, true and correct copies of all LAWS, JOINT RESOLUTIONS, and MEMORIALS, together with the Revised and Consolidated Statutes, now on file in my office, passed at the SEVENTH SESSION of the Legislative Assembly of the Territory of Colorado, begun at Golden City on the 2d day of December, A. D. 1867, and adjourned to Denver on the 9th day of December, A. D. 1867.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the Territory of Colorado.

[L. S.] Done at Denver, this 22d day of January, in the year of our Lord, one thousand eight hundred and sixty-eight.

FRANK HALL,
Secretary of Colorado Territory.

FEDERAL OFFICERS OF THE TERRITORY.

GOVERNOR,
A. CAMERON HUNT.

SECRETARY,
FRANK HALL.

JUDGES OF THE SUPREME COURT.
CHIEF JUSTICE,
MOSES HALLETT.
WILLIAM R. GORSLINE, Associate Justice,
CHRISTIAN S. EYSTER, " "

ATTORNEY GENERAL,
GEO. W. CHAMBERLAIN.

MARSHAL,
M. A. SHAFFENBURG.

ASS'T TREASURER, AND SUP'T U. S. MINT,
GEORGE W. LANE.

SURVEYOR GENERAL,
W. H. LESSIG.

Mining Claims
Div. [illegible] Lee,

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DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind, requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable[*] rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves, by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbid his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into a compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states: for that purpose obstructing the laws of naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harrass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of troops among us:

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes upon us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond the seas to be tried for pretended offenses:

For abolishing the free system of English laws, in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

CONSTITUTION OF THE UNITED STATES.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION I.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION II.

1. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every

subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignations or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate; but shall have no vote unless they be equally divided.

5. The senate shall choose their other officers, and also a president, *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be

convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

SECTION IV.

1. The times, places and manner of holding elections for senators and representatives shall be prescribed in each state, by the legislature thereof, but the congress may at any time, by law, make or alter such regulations, except as to the place of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with a concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to other place than that in which the two houses shall be sitting.

SECTION VI.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, or in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION VII.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections, at large, in their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the vote of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The congress shall have power,

1. To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court. To define and punish piracy and felony committed on the high seas, and offenses against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: and

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be

prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for such person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

SECTION X.

1. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit: make anything but gold or silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators, and representatives, to which the state may be entitled in the congress, but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number is a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.*

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any

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*Annulled. See amendments, Article 12.

person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive, during that period, any other emolument from the United States, or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

SECTION II.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. The congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

SECTION III.

1. He shall from time to time give to the congress informa-

tion of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish.

2. The judges, both of the supreme and inferior courts, shall hold their office during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects.*

2. In all cases affecting ambassadors, or public ministers or consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

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*Restriction by Article 11 of amendments.

3. The trial of all crimes, except in cases of impeachment, shall be by a jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed in any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION III.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies; giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeit, except during the life of the person attained.

ARTICLE IV.

SECTION I.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.

1. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

1. New states may be admitted by the congress into this union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of, and make all

needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claim of the United States, or of any particular state.

SECTION IV.

1. The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: *Provided*, That no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives, before mentioned, and the members of the several legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious tests shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seventh, and of the independence of the United States of America the twelfth.

In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON, *President,*
and Deputy from Virginia.

New Hampshire.

JOHN LANGDON,
NICHOLAS GILMAN.

Connecticut.

WM. SAMUEL JOHNSON,
ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WILLIAM LIVINGSTON,
DAVID BREARLY,
WILLIAM PATERSON,
JONATHAN DAYTON.

Pennsylvania.

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMMONS,
JARED INGERSOLL,
JAMES WILSON,
GOVERNEUR MORRIS.

Delaware.

GEORGE REED,
GUNNING BEDFORD, Jr.

Massachusetts.

NATHANIEL GORMAN,
RUFUS KING,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

Maryland.

JAMES M'HENRY,
DAN'L OF ST. THO. JENIFER,
DANIEL CARROLL.

Virginia.

JOHN BLAIR,
JAMES MADISON, Jr.

North Carolina.

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

South Carolina.

JOHN RUTLEGE,
C. COTESWORTH PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

Georgia.

WILLIAM FEW,
ABRAHAM BALDWIN.

Attest: WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances.

ARTICLE II.

1. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

1. No soldier shall, in time of peace, be quartered in any house without the consent of the owner: nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

1. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

1. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces,

or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

1. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

1. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

1. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

1. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

1. The powers not delegated to the United States by the constitution, nor prohibited by it to these states, are reserved to the states respectively, or to the people.

ARTICLE XI.

1. The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

1. The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state as themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president, shall be vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers in the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

ARTICLE XIII.

1. If any citizen of the United States shall accept, claim, receive, or retain, any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office or emolument of any kind whatever, from any emperor,

king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

ARTICLE XIV.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

[NOTE.—The 11th article of the amendments to the constitution was proposed at the second session of the third congress ; the 12th article, at the first session of the eighth congress ; and the 13th article, at the second session of the eleventh congress.]

ORGANIC ACT.

An Act to provide a Temporary Government for the Territory of Colorado.

[*Approved February* 28, 1861.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, viz.: commencing on the thirty-seventh parallel of north latitude, where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north on said meridian to the forty-first parallel of north latitude; thence along said parallel west to the thirty-second meridian of longitude west from Washington; thence south on said meridian to the northern line of New Mexico; thence along the thirty-seventh parallel of north latitude to the place of beginning; be and the same is hereby erected into a temporary government by the name of the territory of Colorado: *Provided*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries and constitute no part of the territory of Colorado, until said tribe shall signify their assent to the president of the United States to be included within the said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise, which it would have been competent for the government to make, if this act had never passed: *Provided further*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over said territory of Colorado shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offences against the laws of said territory, and reprieves for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a secretary of the said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor, in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first day of December in each year, to the president of the United States, and, at the same time, two copies of the laws to the speaker of the house of representatives and the president of the senate, for the use of congress. And in case of the death, removal or resignation, or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-six, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population (Indians excepted) as nearly as may be; and the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken; and the first election shall be held at such time and places and be conducted in such manner as the governor shall appoint and direct; and he shall, at the same time, declare the number of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected, having the highest number of votes in each of said council districts for members of the council, shall be declared by the governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be elected members of the house of representatives: *Provided*, That in case of a tie between two or more persons voted for, the governor shall order a new election, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided*, That no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

SEC. 5. *And be it further enacted*, That every free white male citizen of the United States above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, including those recognized as citizens by the treaty with the republic of Mexico, concluded February two, eighteen hundred and forty-eight, and the treaty negotiated with the same country on the thirtieth of December, eighteen hundred and fifty-three, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly.*

SEC. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no laws shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents; nor shall any law be passed impairing the rights of private property; nor shall any discrimination be made in taxing different kinds of property: but all property subject to taxation shall be in proportion to the value of the property taxed.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory. The governor shall nominate, and by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except post-masters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

SEC. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of the justices of the peace, shall be as limited by law: *Provided*, That justices of the peace and probate courts shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction; and authority for redress of all wrongs committed against the constitution or laws of the United States, or of the territory, affecting persons or property. Each district court or the judge thereof shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeals in all such cases shall be made to the supreme court of said territory the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Oregon territory received for similar services.

SEC. 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the late territory of Oregon. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the late territory of Oregon, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice and associate justices, attorney and marshal, shall be nominated, and by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs; the chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars; the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars for every twenty miles travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated, annually, the sum of one thousand dollars, to be expended by the governor, to defray the contingent expenses of the territory. There shall also be appropriated, annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses: and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted,* That the legislative assembly of the territory of Colorado shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

SEC. 13. *And be it further enacted,* That a delegate to the house of representatives of the United States to serve during each congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives. The first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly.

SEC. 14. *And be it further enacted,* That when the land in the said territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be and the same are hereby reserved for the purpose of being applied to schools in the states hereafter to be erected out of the same.

SEC. 15. *And be it further enacted,* That temporarily, and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory, to the several districts, and also appoint the times and places for holding courts in the several counties and subdivisions in each of said judicial districts by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

SEC. 16. *And be it further enacted*, That the constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said territory of Colorado as elsewhere within the United States.

SEC. 17. *And be it further enacted*, That the president of the United States, by and with the advice and consent of the senate, shall be and he is hereby authorized to appoint a surveyor-general for Colorado, who shall locate his office at such place as the secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor-general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may from time to time deem it advisable to give him.

AMENDMENTS TO THE ORGANIC ACT.

An Act to amend an Act entitled "An Act to provide a Temporary Government for the Territory of Colorado.

[*Approved March* 2, 1863.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second section of the act to which this act is an amendment be altered so as to read as follows: The executive power and authority in and over said territory of Colorado shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties, and shall receive the emoluments of superintendent of Indian affairs; he may grant pardons for offences against the laws of said territory, and reprieves for offences against the laws of the United States until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

SEC. 2. *And be it further enacted*, That every bill which shall have passed the legislative assembly shall, before it become a law, be presented to the governor of the territory; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.

SEC. 3. *And be it further enacted*, That section nine of the act to which this act is amendatory be altered so as to read as follows: Section 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory, annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and the justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy, when the title or boundaries of land may be in dispute, or when the debt or sum claimed shall exceed three hundred dollars; and the said probate court shall not have jurisdiction in any matter in controversy, when the debt or sum claimed shall exceed the sum of two thousand dollars; and said supreme and district court shall have authority for redress of all wrongs committed against the constitution and laws of the United States; and the said supreme, district and probate courts, respectively, shall possess chancery, as well as common law jurisdiction, and authority for the redress of all wrongs committed against the laws of said territory, affecting persons or property. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions and appeals shall be allowed from the final decisions of said district and probate courts to the supreme court, under such regulations as shall be prescribed by law; but in no case removed to the supreme court, shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, when the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of said supreme and district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the said supreme and district courts of said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeals in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Oregon territory received for similar services.

SEC. 4. *And be it further enacted*, That the provisions of sections one and two of this act shall be applicable to the territory of Dakota, and shall have like effect as in the territory of Colorado.

An Act amendatory of the Organic Act of Colorado Territory.

[*Approved March* 30, 1867.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter the sessions of the legislative assembly of Colorado territory shall be biennial. Members of the council shall be elected for the term of four years, and members of the house for the term of two years, and shall receive the sum of six dollars per day instead of three dollars heretofore allowed, and shall also receive the same mileage now allowed by law.

SEC. 2. *And be it further enacted*, That each house shall have authority to elect, in addition to the officers now allowed by law, an enrolling clerk, who shall receive five dollars per day. The chief clerk shall receive six dollars per day, and the other officers elected by said legislature shall receive five dollars per day each.

SEC. 3. *And be it further enacted*, That the members of the legislative assembly elected at the general election of said territory in the year eighteen hundred and sixty-seven shall compose the first legislature under this act, and said legislature shall meet at the time now fixed by law for the meeting of the legislative assembly of Colorado territory.

An Act to regulate the Elective Franchise in the Territories of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, there shall be no denial of the elective franchise in any of the territories of the United States, now, or hereafter to be organized, to any citizen thereof, on account of race, color, or previous condition of servitude; and all acts or parts of acts, either of congress, or the legislative assemblies of said territories, inconsistent with the provisions of this act are hereby declared null and void.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LAFAYETTE S. FOSTER,
President of the Senate, pro tempore.

Endorsed by the President: "Received on the 14th January, 1867."

[NOTE BY THE STATE DEPARTMENT.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.]

An Act amendatory of "An Act to provide a Temporary Government for the Territory of Montana," approved May 26, 1864.

[*Approved March* 2, 1867.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legislative assemblies of the several territories of the United States shall not after the passage of this act, grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits.

SEC. 7. *And be it further enacted,* That from and after the first day of April next the salary of each of the judges of the several supreme courts in each of the organized territories (except Montana and Idaho) shall be two thousand five hundred dollars.

SEC. 8. *And be it further enacted,* That all acts and parts of acts inconsistent with this act are hereby repealed.

THE

REVISED STATUTES

OF COLORADO.

An Act for Revising and Consolidating the General Statutes of the Territory of Colorado.

Whereas, it is expedient that the general statutes of this territory should be consolidated with the several amendments thereto, and arranged in appropriate chapters and sections: therefore,

Be it enacted by the Council and House of Representatives of Colorado Territory, in manner following, that is to say:

CHAPTER I.

ABATEMENT.

SECTION
1. Plea in abatement to be sworn to.
2. Plaintiff recovers full costs on overruling of plea in abatement.
3. Suit not to abate for non-joinder of defendant; plaintiff may sue out a *sci. fa.* against persons named in plea.
4. If persons named in plea cannot be served, plaintiff on return of summons, may proceed as in other cases where part of defendants are served.
5. Marriage of *femme sole* plaintiff not to abate suit provided the husband appear and cause himself to be made party.
6. Marriage of *femme sole* defendant not to abate suit; husband may be made defendant on his own application, or that of the plaintiff.

SECTION
7. Death of sole plaintiff not to abate the action, when cause of action survives; heirs, etc., upon suggesting such death, may be substituted as plaintiffs.
8. Death of sole defendant not to abate action if sustainable originally against heirs, devisees, executors, etc., of defendant; upon suggestion of death of defendant, plaintiff may have summons against his heirs, etc.
9. In case of death of one of several plaintiffs, action not to abate if cause of action survive to the survivor; death of one of several defendants not to abate suit; proceedings in either of such cases.
10. Upon death or removal of an executor or administrator who is plaintiff or defendant, his successor may be substituted.

SECTION
11. In case of death of a public officer or trustee, plaintiff in any action, or his removal from office before final judgment, his successor may be substituted, and continue such action.
12. Suits for partition of lands not to abate by death of any party; proceedings in such cases.
13. Suits in name of one to use of another, not abate by death of nominal plaintiff; *cestui que use* may continue suit in his own name, on suggesting death.

SECTION
14. This act to extend to proceedings in law and equity; sections five to thirteen to extend to appeals, writs of error and *certiorari*.
15. All orders introducing a new party, as defendant or co-defendant, to be made upon the voluntary appearance of such party, or on service of *sci. fa.* to be sued out in term or vacation; manner of executing; when to be sued out.
16. Plea of misnomer of defendant not to abate suit; plaintiff may amend.

SECTION 1. No plea in abatement other than a plea to the jurisdiction of the court,[1] or where the matters relied upon to establish the truth of such plea, appear of record, shall be admitted or received by any court of this territory, unless the party offering the same, or some other person for him, file an affidavit of the truth thereof.[2]

SEC. 2. When a plea in abatement shall be adjudged insufficient by the court, the plaintiff shall recover full costs to the time of overruling such plea.

SEC. 3. When one or more of the persons composing any company or association of individuals, shall be sued, and the person or persons so sued shall plead in abatement, that all persons who should have been made defendants, are not joined in the suit, such suit shall not for that cause abate, if the plaintiff or plaintiffs forthwith sue out a *scire facias* against the persons named in such plea; and on the return of such *scire facias*, the names of the persons named in such plea may be inserted in the declaration, and the suit shall proceed in all respects thereafter as if the persons named in such plea had been named in the original writ.

SEC. 4. If the persons named in such plea, cannot be served with process, the plaintiff or plaintiffs, on the return of such summons, may suggest, on the record, the names of those not served, and proceed, as in other cases in which service is made on part of the defendants only; and no other plea, in abatement for non-joinder of defendants, shall be allowed in the same case.

SEC. 5. No action or complaint, in law or equity, commenced by a *femme sole*, shall abate on account of her intermarriage before final judgment: *Provided*, The husband shall appear and cause such marriage to be suggested on the record, and himself made a party to the suit, after which the suit may proceed, in the same manner as if commenced after such marriage.

SEC. 6. If a *femme sole* defendant intermarry before final judgment or decree, the action shall not thereby abate; but the husband, upon his own application or on that of the plaintiff, and due notice thereof given, may, by order of the court, be

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(1) A plea to the jurisdiction need not be verified by affidavit. *Howe* v. *Thayer*, 24 Ill. 246.

(2) The affidavit in support of a plea in abatement must be positive, and not upon information and belief. *King* v. *Haines*, 23 Ill. 340.

made a party to the suit, and the suit shall then proceed as in other cases.

SEC. 7. When there is but one plaintiff in an action, and he shall die before final judgment, such action shall not thereby abate, if the cause of action survive to the heirs, devisees, executors, or administrators, of such plaintiff, but any of such to whom the cause of action shall survive, may, by suggesting such death on the record, be substituted as plaintiff or plaintiffs therein, and prosecute the same as other cases.[3]

SEC. 8. When there is but one defendant in an action, and he shall die before final judgment, such action shall not thereby abate, if it might be originally prosecuted against the heirs, devisees, executors or administrators, of such defendant, but the plaintiff may suggest such death on the record, and shall, by order of the court, have summons against such person or persons, requiring him or them to appear and defend the action, after which the suit shall proceed to final judgment according to law.[4]

SEC. 9. If there are two or more plaintiffs in any action, and one or more of them die before final judgment, the action shall not thereby abate, if the cause of action survive to the surviving plaintiff or plaintiffs, and if there are two or more defendants in any action, and one or more of them shall die before final judgment, such action shall not thereby abate, but in either of said cases such death or deaths shall be suggested on the record, and the action may proceed at the suit of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, as the case may require, in all respects as if such persons had been originally sole parties to the suit.

SEC. 10. When any executor or administrator shall be plaintiff or defendant in any suit, and shall, before final judgment, die, or cease to be such executor or administrator, the suit shall not thereby abate, but the same may be continued by or against the successor of such executor or administrator, by an order of court substituting such successor as defendant therein.

SEC. 11. When an action is authorized or directed by law to be brought by, or in the name of any public officer, or by any trustee appointed by virtue of any statute, and such officer or

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(3) Upon the death of a plaintiff, and the substitution of the personal representative, it is unnecessary to amend the declaration by inserting the name of the administrator; the order of substitution is sufficient. *Hoes* v. *VanAlstyne*, 20 Ill. 202.

Where, upon suggestion of the death of a sole plaintiff the administrator was made party, but whether plaintiff or defendant, did not appear, and the subsequent proceedings were carried on in the name of the original parties; the judgment was for this among other causes reversed. *Thorpe* v. *Starr*, 17 Ill. 199.

(4) The action of ejectment does not abate by death of a sole defendant. *Guyer* v. *Wookey*, 18 Ill. 536.

A proceeding commenced by attachment does not abate by the death of a sole defendant, nor is the property released, nor the garnishees discharged. *Davis* v. *Shapleigh*, 19 Ill. 386.

trustee shall, before final judgment, die, or cease to be such officer or trustee, the suit shall not thereby abate if the cause of such suit survive to his successor, but the same may be continued by such successor, who shall be substituted for that purpose by order of the court, on a suggestion of such death being made upon the record.

SEC. 12. Proceedings for the partition of lands shall not abate by the death of any party thereto, but shall continue in the names of the survivors, if the interest of such deceased person in the lands shall survive to them; and if such interest shall pass to other persons, they may, by rule of court, be made parties, and the same proceedings may be had as if they had been made parties originally.

SEC. 13. No suit instituted in the name of one, for the use of another, shall abate by reason of the death of the person whose name is used, but may be continued by the real plaintiff in interest, in his own name, on his suggesting such death on the record, and an order of the court being made, substituting his name for that of the deceased plaintiff.

SEC. 14. The provisions of this chapter shall extend as well to proceedings in equity, as at law; and the provisions of sections five, six, seven, eight, nine, ten, eleven, twelve and thirteen, shall extend to all appeals, writs of error, and of *certiorari*.

SEC. 15. All orders authorized by this chapter to be made for the purpose of introducing into a suit a new person, as a codefendant with the original party, or for the purpose of substituting a person as a defendant, in place of the original party, shall be made either upon the voluntary appearance of such person, or by order of the court, after the party to be made such defendant shall have been served with a *scire facias*, and all such writs of *scire facias* may be sued out either in term time or in vacation, and may be directed to any county, and shall correspond as nearly as practicable with the original writ, and may be executed and returned in the same manner; but no *scire facias* for the purpose of substituting another person in place of the original defendant shall be sued out after the second day of the second term of the court, next after the term at which the death or disability of the original party shall be suggested on the record.

SEC. 16. Whenever any person shall plead in abatement a misnomer of defendant, the suit shall not for that reason abate, but the plaintiff may have leave to amend by inserting the correct name, and the suit shall thereupon proceed as though the defendant had been originally sued by his or her correct name.

Prior Statutes Repealed. An act concerning practice in civil cases, sections 54-69. Approved Nov. 5, 1861. Laws 1861, p. 275.

CHAPTER II.

ADVERTISEMENTS.

SECTION
1. Publisher's certificate to be evidence of the publication of any legal advertisement.

SECTION
2. Certificates and notice to be a part of the record.

SECTION 1. When any notice or advertisement shall be required, by law, or the order of any court, to be published in any newspaper, the certificate of the printer or publisher,[1] with a printed copy of such notice or advertisement annexed, stating the number of times which the same shall have been published, and the dates of the first and last paper containing the same, shall be sufficient evidence of the publication therein set forth.

SEC. 2. Such notices and certificates of the publication thereof when so certified, shall be a part of the records of the court.

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(1) The certificate must show affirmatively that the person making it is the printer or publisher of the newspaper, and must give the date of the first and last publication. *Haywood* v. *McCrory*, 33 Ill. 463.

Prior Statutes Repealed. An act concerning legal advertisements. Approved Nov. 6, 1861. Laws 1861, p. 134.

CHAPTER III.

ALIENS.

Aliens to take, hold, inherit, transmit and devise lands, and to have the same remedies in relation thereto as citizens.

Personal estate of aliens to be distributed in the same manner as that of citizens.

All aliens residing in this territory, may take, by deed, will or otherwise, lands and tenements and any interest therein, and alienate, sell, assign and transmit the same to their heirs or any other persons, whether such heirs or other persons be citizens of the United States or not, and upon the decease of any alien having title to, or interest in, any lands or tenements, such lands and tenements shall pass and descend in the same manner as if such alien were a citizen of the United States; and it shall be no objection to any person having an interest in such estate, that they are not citizens of the United States; but all such persons shall have the same rights and remedies, and in all things be placed upon the same footing as natural born citizens of the United States. The personal estate of an alien, dying intestate, who at the time of his death shall reside in this territory, shall be distributed in the same manner as the estate of natural born citizens; and all persons shall be entitled to their proper distributive shares of such estate under the laws of this territory, whether they are aliens or not.

Prior Statutes Repealed. An act concerning aliens. Approved Nov. 4, 1861. Laws 1861, p. 57.

CHAPTER IV.

AMENDMENTS AND JEOFAILS.

SECTION
1. General power of court to permit amendments.
2. Courts may correct misprisions of sheriffs, etc.
3. Judgments not avoided by erasures or interlineations, etc.
4. New entries at subsequent term, not to impair judgment.
5. After verdict court to give judgment notwithstanding any mispleading; judgment not reversed for want of process or return, etc.
6. After verdict judgment not to be stayed for want of certain averments.
7. Certain defects cured by verdict.
8. What causes of demurrer must be specially assigned.
9. Upon demurrer overruled, demurrant may plead on payment of costs; if demurrer sustained, defective pleadings may be amended on payment of costs; amendment of form not to work a continuance.
10. Judgments upon *nihil dicit, non sum informatus*, and proceedings therein cured of all error, the same as if given on verdict.
11. This act to extend to suits for any debt due the territory or duty or revenue due thereto; to all *mandamus* and *quo warranto*
12. Variances in writs of error may be amended.
13. This act not to extend to indictments.

SECTION 1. The court in which any record, process, declaration, count, plea, warrant of attorney, writ, panel or return is, or may be, while the same remains before them, shall have power to examine such records, processes, declarations, counts, pleas, warrants of attorney, writs, panels and returns, by them and their clerks, and amend (in affirmance of judgment of such) all that which to them, in their discretion, seemeth to be misprision of the clerks therein, so that by such misprision, no judgment shall be reversed or annulled; and if any record, process, declaration, count, plea, warrant of attorney, writ, panel or return be certified defective, otherwise than according to the writing which thereof remaineth in the offices, courts or places from whence they are certified, the parties in affirmance of the judgments of such records and processes, shall have advantage to allege that the same writing is variant from the said certificates, and that being found and certified, the same variance shall be by said court reformed and amended, according to the first writing.

SEC. 2. The courts before whom any misprision or default shall be found, in any record or process which shall be depending before them, as well by way of appeal or error as otherwise, or in the returns (the same made or to be made by sheriffs, coroners, or any other) by misprision of the clerk of any of said courts, sheriffs or other officers whatsoever, shall have power to amend such defaults or misprisions according to their discretions, and by examination thereof by the said courts, to be taken when they shall think needful; and all such amendments may be made, as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

SEC. 3. For errors assigned in any record, process, warrant of attorney, writ original, or judicial, panel or return, or that in any places of the same there be erasures or interlineations, or that there be any addition, subtraction or diminution of words, letters or titles, or parcels of letters, found in the same, no judgment, record or decree shall be reversed or annulled.

SEC. 4. Record and process, real, personal or mixed, whereof judgment or decree shall be given and enrolled, or things touching such pleas, shall, in nowise, be amended or impaired by new entering of the clerks, either by the record or things certified, in any term subsequent to that in which such judgment or decree is or shall be given and enrolled.

SEC. 5. If any issue shall be tried by any court or jury, and be found for either party, in any court of record, then the court by whom judgment ought to be given, shall proceed and give judgment in the same—any mispleadings, lack of color, insufficient pleading or jeofail, or any miscontinuance, discontinuance, misconceiving of process, misjoining of the issue, lack of warrant of attorney, or any other default or negligence of any of the parties, their counsellors or attorneys to the contrary notwithstanding; and the said judgments thereof, so to be had and given, shall stand in full strength and force, to all intents and purposes, according to the said verdict or finding, without any undoing the same by appeal, writ of error, or false judgment, in like form as though no such default or negligence had ever been had or committed; and the judgment thereupon shall not be stayed or reversed by any default of form or lack of form in any writ, original or judicial, count, declaration, plaint, bill, suit or demand, for want of any writ, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process, upon or after any aid prayer, or voucher.

SEC. 6. If any verdict be rendered by the court or jury for either party, in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any variance in form, only, between the original writ or process and the declaration, petition, plaint or demand; or for lack of any averment of any life or lives of any person or persons, so as upon examination the said person be found to be in life, or by reason that any of the persons in whose favor the verdict is rendered is an infant, and appeared by attorney.

SEC. 7. If any verdict shall hereafter be given by a court or jury, for either party, in any court of record, judgment thereon shall not be stayed or reversed for any default in form, or lack of form; or by reason that there are not pledges, or but one pledge to prosecute, returned upon the original writ; or because the name of the sheriff is not returned upon the original writ or process; or for default of entering pledges upon any petition or declaration; or for default of alleging the bringing into court of any bond, bill, indenture, or other deed or writing, mentioned in the declaration or other pleading; for default of allegation of bringing into court of letters testamentary or of administration; or by reason of the omission of the words "with force and arms," or "against the peace;" or for, or by reason of, mistaking the christian or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month or year, by the clerk, in any bill, petition, declaration or pleading, where the right name, surname, sum, day, month or year, in any writ, record or proceeding, or on the same record where the mistake is committed, is or are once truly and rightly alleged, whereunto the party might have demurred, and show the same for cause; nor for want of the averment of the words "and this he is ready to verify," or "and this he is ready to verify by the record;" or for not alleging "as appears by the record;" or that there was no right name, so that the cause was tried by a jury of the proper county or place where the action was laid; nor shall any judgment after verdict be reversed, for want of entering that the person against whom such judgment is given "be in mercy," or "be taken;" or by reason that the words "be taken" are entered for "be in mercy," or *vice versa;* nor for that in the judgment "it is granted" are entered for "it is considered;" nor for that the increase of costs, after the verdict in any action, are not entered at the request of the party for whom judgment is given; nor by reason that the costs on any judgment are not entered to be by consent of the plaintiff; but all such omissions, variance, defects, and all other matters of the like nature, not being against the right of the matters of the suit, nor whereby the issue or trial is altered, shall be amended by the courts where such judgments are, or shall be given, or whereunto the record is, or shall be removed, by appeal or writ of error.

SEC. 8. When any demurrer shall be joined and entered in any action or suit, in any court of record, the judges shall proceed and give judgment according as to the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission or defect, for want of form in any writ, return, plaint, declaration or other pleading, process or cause of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as cause of the same, so as sufficient matter appear on the said pleadings upon which the court may give judgment according to the very right of the cause; and therefore no advantage or exception shall be taken of or for an immaterial traverse, of or for default of entering pledge upon any petition or declaration; or for the default of alleging the bringing into court of any bond, bill, indenture or writing, mentioned in the declaration or other pleadings; or of or for the default of alleging the bringing into court, of letters testamentary or of administration; or of or for the omission of the words "with force and arms," or words of like character; but the court shall give judgment according to the very right of the cause, as aforesaid, without regarding any such imperfections, omissions and defects, or other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer; and after demurrer joined, the court before whom the same shall be pending, may from time to time, amend all and every such imperfection, omission, defect and want of form as are before mentioned, other than those only which the party demurring shall specially and particularly set down with his demurrer as aforesaid.

SEC. 9. When any demurrer to any pleading shall be joined in any suit or action pending in any court of record, and the same shall be found against the party demurring, upon payment of the costs he shall be permitted to plead to the action in the same manner, as if no such demurrer had been filed; but the cause in which such demurrer is filed shall not for that reason be continued or delayed. If a demurrer to any pleading shall be sustained, the defective pleading may be amended on payment of costs, but an amendment which is merely matter of form shall not cause the case to be continued.

SEC. 10. Every thing herein contained, shall extend to all judgments which shall be entered upon *nihil dicit* or *non sum informatus* in any court of record, nor any judgment or any writ of inquiry of damages executed thereon shall be stayed or reversed, for, or by reason of any imperfection, omission, defect, matter or thing which would have been aided and cured by this chapter in case a verdict had been given in such action or suit, so there be an original writ duly issued according to law.

SEC. 11. This chapter shall extend to all suits in any court of record for the recovery of any debt due the territory, or any duty or revenue thereto belonging, and also to all writs of *man-*

damus and informations of the nature of *quo warranto* and proceedings thereon.

SEC. 12. All writs of error wherein there shall be any variance from the original record, or any other defect, may and shall be amended and made agreeable to such record by the respective courts where such writs of error are or shall be made returnable.

SEC. 13. No part of this chapter shall extend to any indictment, or presentment for any criminal matter or process upon the same.

Prior Statutes Repealed. An act concerning amendments and jeofails. Approved Oct. 24, 1861. Laws 1861, p. 177.

CHAPTER V.

ARBITRATIONS AND AWARDS.

SECTION
1. What may be submitted to arbitration.
2. Submission to arbitration.
3. Arbitrator to take oath.
4. Arbitrators have power to issue subpœnas and attachments for witnesses; to administer oaths, and to give decision in writing.
5. Award may be filed with the clerk of the district court; execution to issue, when the award is for the payment of money.
6. Fees of arbitrators; to be paid by successful party and included in the judgment.

SECTION
7. Matters submitted to arbitrators and decided according to this act, held to be adjudicated and not open for review.
8. Judgments of miners' courts, where the defendants were served with process or notice, and appeared in person, or by attorney (except where the action was on a written contract to pay money), to have the same force and effect as an award of arbitrators under this chapter.

SECTION 1. All controversies which may be the subject of a civil action, may be submitted to the decision of one or more arbitrators, in the manner and with the effect indicated in this chapter.

SEC. 2. In order to make future arbitrations obligatory and binding upon the parties, they shall, before they make their submission, make and subscribe a written article of agreement, in and by which they shall agree to submit all matters, or some particular matter of difference, to the arbitrators named, and to abide their award; and, also, that the award, when made, may be filed, by the successful party, with the clerk of the district court, as the basis of a judgment, and that an execution may be issued for its collection.

SEC. 3. Arbitrators shall not have power to act, hereafter, until they take an oath, before some person authorized by law to administer oaths, to the effect that they will well and truly try, and impartially and justly decide the matter in controversy, according to the best of their ability.

SEC. 4. Arbitrators, duly sworn, and entered upon their duties, shall have power to issue subpœnas and attachments for witnesses, to administer oaths to witnesses and others in the case, and after a trial and hearing, to decide the matter, in writing, according to the very right of the case.

SEC. 5. The party in whose favor any award shall be made, may file the same with the clerk of the district court of his district, who shall be authorized to enter a judgment thereon, and if such award requires the payment of any sum of money, it shall be lawful for the clerk to issue an execution out of, and under the seal of the court thereon, for the collection of the judgment.

SEC. 6. Arbitrators shall be entitled to receive from the party in whose favor the award is made, three dollars per day each, for their services, and the amount of their compensation may be included in the judgment, entered thereon by the clerk.

SEC. 7. Whenever it shall appear upon trial of any action at law, or in equity, or in any legal proceedings, in or before any court of competent jurisdiction, that the subject matter of such action or proceeding, or of any part thereof, or of the defence thereto, or of any part thereof, has been submitted to and decided by arbitrators according to the terms of this chapter, such matter shall be held to have been adjudicated and settled, and not open, either directly or indirectly for review.

SEC. 8. All adjudications, decisions or judgments, heretofore had, given or pronounced, by any of the judges of the so-called people's or miners' courts, within this territory, in actions or proceedings in which the defendant or defendants, or the party proceeded against, were personally served with process or notice of such action or proceeding, and actually appeared in such action or proceeding, in person or by attorney—except when the action was founded upon a written contract to pay money—or in any other manner assented to the jurisdiction, and submitted the case to his decision, or the decision of a jury therein, shall be held and taken to have the same force, validity and effect, in an adjudication and final settlement of the matter in controversy, or which was the subject matter of the action or proceeding, as if the same matter had been submitted to arbitrators, according to this chapter and an award thereupon had been made.

Prior Statutes Repealed. An act concerning arbitrations and awards. Approved, November 7, 1861. Laws 1861, p. 380.

CHAPTER VI.

ATTACHMENTS.

SECTION

1. Attachment to issue; in what cases.
2. Form of writ.
3. Officer to attach property sufficient to satisfy debt; may pursue into another county if debtor is removing his property; service of writ on defendant.
4. Clerk to take bond before issuing attachments.
5. Condition of bond.
6. In case of joint debtors, if one come within provisions of this chapter attachment shall issue against his estate, and his co-debtors shall be summoned to answer the action.
7. Defendants may be designated by reputed names, or by firm name; heirs, executors administrators, liable to provisions of this chapter.
8. Attachment not to be quashed for defects in bond or affidavit; plaintiff may amend.
9. Officer to retain possession of property attached, unless forthcoming bond given.
10. In case of forfeiture of bond, sheriff may assign same to plaintiff; if plaintiff will not accept same, the sheriff shall be liable to same judgment and recovery as the defendant, unless court adjudge the security on the bond sufficient; or unless further bond filed at return term; exceptions to sufficiency of the security to be made at return term; sheriff on payment of judgment has his remedy against defendant.
11. If sheriff fail to return bond, or to take one when required as above, plaintiff may have a rule to show cause for such failure; if no sufficient cause be shown, plaintiff to have judgment against the sheriff for his debt.
12. Sheriff to summon garnishees designated by the plaintiff.
13. Sheriff shall return attachment after levy or service thereof, if required by plaintiff; clerk thereupon to give four weeks notice by publication in some newspaper, of the pendency of suit.
14. If defendant appear, put in sufficient bail and plead, estate attached shall be liberated, and garnishees discharged.
15. Plaintiff upon establishing his demand may have judgment therefor, and execution to issue: after judgment against defendant, plaintiff may have judgment against garnishee for the amount in his hands, or due from him to defendant; proceedings where personal property not including money found in the hands of a garnishee.
16. Garnishees failing to appear, conditional judgment to be given, and *scire facias* issued against him returnable, etc.; failing to appear on due service, and return of the *scire facias*, judgment to be confirmed, and execution issued for the amount due plaintiff; judicial attachment against all persons appearing liable by the answer of any garnishee; proceedings in case personal property found in possession of the garnishee.
17. Judgment against garnishee, execution not to issue for twenty days after debt matures; judgment not to be given against garnishee for debt, by promissory note not due at the date of the judgment.
18. Plaintiff may file interrogatories to garnishee at any time during return term; garnishee to answer by third day of next succeeding term.
19. Plaintiff suggesting falsity of the answer of a garnishee, may have a jury to try the liability of such garnishee; costs on determination of this issue.
20. Either party, or garnishee, may obtain commission to take deposition of non-resident witness, on giving ten days notice to opposite party.
21. Third persons claiming the property attached may interplead at any time before judgment; trial by jury; party prevailing to have costs.
22. Unless defendant has been served with the writ of attachment, judgment by default to be satisfied out of the estate attached.
23. Perishable property attached, if not replevied, may be sold; proceedings thereon; notice of sale; moneys arising from sale to be deposited in hands of clerk to answer judgment.
24. Officer attaching live stock to receive a compensation for sustenance; to be ascertained by the court, and collected as costs.
25. Defendant may avail himself of any set off, whether due or not at date of attachment; garnishee may set off any claim, whether due or not from the plaintiff or defendant, in the attachment.
26. Attachments returned, and returnable to same term, and judgments recovered at same term, to share *pro rata* in proceeds of property attached; creditor pursuing property removed from the county, to have priority.
27. Attachment may be issued on Sunday; in what cases.
28. Plaintiff or defendant may appeal or prosecute a writ of error; trial of right of property.
29. Defendants may have return of property attached on giving bond to pay the debt and costs; or recognizance in court; attachment thereupon dissolved.
30. Plaintiffs in debt, covenant, and trespass on the case on promises, may have an attachment in aid; publication of notice to defendant.
31. Attachment to be issued to foreign counties when; *alias* and *pluries;* prior levies to be endorsed thereon; levy thereunder not to exceed sufficient, together with prior levies, to satisfy the plaintiff's demand.
32. Before whom affidavit for attachment to be made; authority of non-resident officer to administer oath; how proved.
33. In case of joint debtors, non-residents, attachment may issue against the estate of either of them.
34. This chapter to be construed liberally.
35. The provisions of the chapter concerning practice applicable to proceedings under this chapter.
36. Notice by publication not required where defendant served with process.
37. Citizens absent in the military service not liable to suit by attachment.
38. Plea in abatement; traversing affidavit; trial thereon; judgment.
39. This chapter to take effect from its passage.

SECTION 1. If any creditor, his agent or attorney, shall file an affidavit,[1] in the office of the clerk of the district court of any

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(1) The affidavit must allege facts positively, and not upon information and belief. *Archer* v. *Claflin*, 31 Ill. 306.

county in this territory, setting forth, that any person is indebted to such creditor, in a sum exceeding twenty dollars, stating the nature[2] and amount of such indebtedness, as near as may be, and that such debtor has departed, or is about to depart from this territory, with the intention of having his effects removed from this territory,[3] or is about to remove his property from this territory, to the injury of such creditor, or that such debtor conceals[4] himself or stands in defiance of an officer so that process cannot be served upon him, or is not a resident of this territory, or that he is converting or is about to convert his property into money, or otherwise dispose of his property with the intent of placing it beyond the reach of such creditor, or that he fraudulently contracted the debt or incurred the obligation respecting which the suit had been brought, or that the defendant is a foreign corporation, or that he has fraudulently conveyed any of his estate with intent to delay, hinder or defraud creditors, it shall be lawful for such clerk to issue a writ of attachment, directed to the sheriff of the county, returnable like other writs, commanding him to attach the lands, tenements, goods, chattels, rights, credits, moneys, and effects of said debtor of every kind, or so much thereof as will be sufficient to satisfy the claim sworn to, with interest and costs of suit, in whose hands or possession the same may be found.

SEC. 2. The writ of attachment required in the preceding section shall be substantially in the following form: The people of the territory of Colorado to the sheriff of —— county, greeting. Whereas A. B. (or agent or attorney of A. B., as the case may be) hath complained on oath (or affirmation) to —— clerk of district court of the —— judicial district in and for the county of ——, that C. D. is justly indebted to the said A. B. to the amount of ——, and oath (or affirmation) having also

But if the writ issue upon an affidavit defective in this respect, it is not absolutely void, but even the officer who issued it will be protected against a prosecution for acts done under it. *Booth* v. *Rees*, 26 Ill. 48.

(2) The nature of the indebtedness is not required to be stated with particularity:—"For which they have given their note payable in New York"; "by his instrument in writing, signed, etc." are held to be sufficient. *Phelps* v. *Young*, Breese, 256. *Haywood* v. *McCrory*, 33 Ill. 459.

Where personal service is not had, nor appearance entered for the defendant, the plaintiff is restricted in his recovery to the causes of action, and the amount specified in his affidavit, with its accruing interest. *Rowley* v. *Berrian*, 12 Ill. 202; *Steamboat Clarion* v. *Moran*, 18 Ill. 501. And see *Tunnison* v. *Fields*, 21 Ill. 108.

If the defendant might at common law, declare in the common counts, commencing by attachment will not deprive him of this right. 21 Ill. 108. And see *Plato* v. *Turrill*, 18 Ill. 273.

(3) Departing from the State, but with the intention of returning, and without any intent to evade service of process, is no ground for attachment. *Boggs* v. *Benksdoff*, 23 Ill. 68.

And if the debtor be removing property, it must be a removal *to the injury of creditors* to justify an attachment; if the debtor have other property sufficient to satisfy the debt, there is no ground. *White* v. *Willson*, 5 Gilm. 24.

And though the debtor be insolvent, yet removing property from the territory, with intent to dispose of it, and return with the proceeds, in the ordinary course of the debtor's business is no ground for attachment. *Ridgway* v. *Smith*, 17 Ill. 33.

(4) If a debtor conceals himself, for however short a period, with the primary object of evading service of process, he is liable to attachment. *Young* v. *Nelson*, 25 Ill. 565.

been made that said C. D. resides out of this territory, (or conceals himself, &c., as the case may be) and the said —— having given bond and security according to the directions of the act in such cases made and provided; we therefore command you, that you attach so much of the estate, real and personal of the said C. D. to be found in your county, as shall be of value sufficient to satisfy the said debt and costs according to the complaint; and such estate, so attached in your hands to secure so as to provide that the same may be liable to further proceeding thereupon according to law, at a court to be holden at —— for the county of —— upon the —— day of —— next, so as to compel the said C. D. to appear and answer the complaint of the said A. B., and that you also summon —— as a garnishee to be and appear at the said court on the said —— day of —— next, then and there to answer to what may be objected against him, when and where you shall make known to said court, how you have executed this writ, and have you then and there this writ. Witness —— clerk of the said court, this —— day of —— in the year of our Lord, &c.; which attachment will be signed by the clerk, and the seal of the court affixed thereto.

SEC. 3. Such officer shall, without delay, execute such writ of attachment upon the lands, tenements, goods, chattels, rights, credits, moneys and effects of the debtor, of sufficient value to satisfy the claim sworn to, with costs of suit, as commanded in said writ. If the defendant, or any person for him, shall be in the act of removing any personal property, the officer may pursue and take the same, in any county of this territory, and return the same to the county from which such attachment issued; he shall also serve said writ upon the defendant therein, if he can be found; by reading the same or delivering a copy thereof to him; the return to such writ shall state the particular manner in which the same was served.

SEC. 4. Every clerk, before granting an attachment, as aforesaid, shall take bond and security from the party for whom the same shall be issued, his or her agent or attorney, payable to the defendant, in double the sum sworn to be due, conditioned for the satisfying of all costs which may be awarded to such defendant or to any others interested in said proceedings, and all damages which shall be recovered against the plaintiff for wrongfully suing out such attachment, or for any excessive levy made under any writ of attachment issued in such suit; which bond, with the affidavit or affirmation of the party complaining, his or her agent or attorney, shall be filed in the office of the clerk granting the attachment. Every attachment issued without a bond and affidavit taken and returned as aforesaid, is hereby declared illegal and void, and shall be dismissed.

SEC. 5. The condition of the bond required in the preceding section, shall be, substantially, in the following form:

THE CONDITION of this obligation is such, that whereas the above bounden —— hath, on the day of the date hereof, prayed an attachment out of the district court of the —— judicial district in and for the county of ——, at the suit of ——, against the estate of the above named ——, for the sum of ——, and the same being about to be sued out of said court, returnable on the —— day of —— next, to the term of the court then to be holden: Now if the said —— shall prosecute his suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said —— all such costs in said suit, and such damages as shall be awarded against the said ——, his heirs, executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, and all damages which may accrue to the said —— by reason of any excessive levy made under any writ of attachment issued in this cause, then the above obligation to be void, otherwise to remain in full force and effect.

SEC. 6. In all cases where two or more persons are jointly indebted, either as partners or otherwise, and an affidavit shall be filed, as provided in the first section of this chapter, so as to bring one or more of such joint debtors within its provisions and amenable to the process of attachment, then the writ of attachment shall issue against the property and effects of such as are so brought within the provisions of this chapter; and the officer shall also be directed, in said writ, to summon all such joint debtors as may be named in the affidavit filed in the cause, to answer to the said action, as in other cases of attachment.

SEC. 7. It shall be sufficient in all cases of attachment, to designate defendants by their reputed names or surnames, and joint defendants by their separate or partnership names, styles or titles, as they are usually known, and heirs, executors and administrators of deceased defendants shall be subject to the provisions of this chapter, in all cases in which it may be applicable to them.

SEC. 8. No writ of attachment shall be quashed nor the property taken thereon restored, nor any garnishee discharged, nor any bond by him given, cancelled, nor any rule entered against the sheriff, discharged on account of any insufficiency of the original affidavit, writ of attachment, or attachment bond, if the plaintiff or some credible person for him, shall cause a legal and sufficient affidavit or attachment bond to be filed, or the writ to be amended in such time and manner as the courts shall in their discretion direct, and in that event, the cause shall proceed as if such proceedings had been originally sufficient.

SEC. 9. The officer serving the writ, shall take and retain the custody and possession of the property attached, to answer and abide by the judgment of the court, unless the defendant or person in whose possession the same may be found,[5] shall enter into bonds and security to the officer, to be approved by him, in double the value of the property so attached, with condition that the said estate and property shall be forthcoming, to answer the judgment of the court in the said suit; the sheriff shall return such bond to the court in which the suit is brought, on the first day of the term to which such attachment is returnable.

SEC. 10. If such bond be forfeited, the sheriff may[6] assign such bond to the plaintiff in the attachment, by a writing thereon, under his hand, in the presence of two or more credible witnesses, and after such assignment, the plaintiff may bring a suit in his own name thereupon; if the plaintiff will not accept such assignment of such bond, and the court shall adjudge such security insufficient, such sheriff shall be subject to the same judgment and recovery, and have the same liberty of defence, as if he had been made defendant in the attachment, unless good and sufficient security shall be given, and bond filed, during the term of the court to which such attachment is returnable; at which term, the objections to the sufficiency of the security taken shall be made, to entitle the party suing out the attachment to proceed against the sheriff, and execution may issue thereupon, as in other cases of judgment; and whenever the judgment of the plaintiff, or any part thereof, shall be paid or satisfied by any such sheriff, he shall have the same remedy against the defendant, for the amount so paid by him, as is now provided by law for bail against their principal, where a judgment is paid or satisfied by them.

SEC. 11. If the sheriff shall fail to return a bond, taken by virtue of the provisions of this chapter, or shall have neglected to take one when he ought to have done so, in any attachment issued under any provisions of this chapter, the plaintiff in the attachment may cause a rule to be entered, at any time during the first two days of the term to which the writ is returnable, requiring the said sheriff to return the said bond; or in case no bond has been taken, to show cause why such bond was not taken. If the said sheriff shall not return the said bond within one day thereafter, or show legal and sufficient cause why the said bond had not been taken, judgment shall be entered up against him for the amount of the plaintiff's demand, with costs of suit; execution may thereupon issue for the same, whenever

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(5) It seems that a third person in possession of, and claiming the property, may give forthcoming bond, reciting his claim, and conditioned to have the property forthcoming if he fail to substantiate his claim. *Purcell* v. *Steele*, 12 Ill. 95.

(6) The word may is not construed to mean shall; the action will lie in the name of the sheriff. *Young* v. *Campbell*, 5 Gilm. 83.

judgment shall have been entered against the defendant in the attachment.

SEC. 12. When the sheriff shall be unable to find property of any defendant, sufficient to satisfy any attachment issued under the provisions of this chapter, he is hereby required to summon all persons within his county, who may be named in the writ, or whom the creditor shall designate as having any property, effects or choses in action, in their possession or power belonging to the defendant, or who are in anywise indebted to such defendant, to appear before the court to which the writ is returnable, on the return day of the attachment, then and there to answer, upon oath, what amount they are indebted to the defendant in the attachment, or what property, effects or choses in action he or she had in his or her possession or power, at the time of serving the attachment; the person or persons so summoned shall be considered as garnishees, and the sheriff shall state in his return the names of all persons so summoned, and the date of service on each.

SEC. 13. When any attachment shall be issued out of the district court, and levied or served on a garnishee, it shall be the duty of the sheriff to return the same if required by the plaintiff, and on return thereof, the clerk shall give notice for four weeks successively in some weekly newspaper published in this territory, most convenient to the place where the court is held,[7] of such attachment and at whose suit, against whose estate, for what sum, and before what court the same is pending, and that unless the defendant shall appear on the return day of such writ, judgment will be entered, and the estate attached will be sold: *Provided*, That in case of foreign attachment, if sixty[8] days shall not intervene between the first insertion of such notice, and the first term of the court, then the cause shall be continued until the next term of the court. Any defendant in attachment may appear and plead without giving bail or entering into bond.

SEC. 14. If the defendant appear, put in sufficient bail and plead as aforesaid, his estate so attached shall be liberated, and the garnishee or garnishees, if any, discharged.

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(7) It seems that a publication in any newspaper printed at the county seat, where there are several, will suffice. *Stow* v. *Kimball*, 28 Ill. 93.

(8) The rule for the computation of time is to exclude the day of the first publication, and include the first day of the term. *Varein* v. *Edmundson*, 5 Gilm. 270.

The court will not take jurisdiction by the publication of notice unless the writ be returned levied upon property, or served upon a garnishee. *Martin* v. *Dryden*, 1 Gilm. 212. Nor unless there be also a return of not found as to the defendant. *Morris* v. *Trustees of Schools*, 15 Ill. 270.

The notice in such case stands in lieu of the service of process; the publisher's certificate may be likened to an officer's return of service. They must appear in the records in order to sustain a judgment by default. *Varein* v. *Edmundson*, 5 Gilm. 270. *Randall* v. *Songer*, 16 Ill. 27.

But in *Reddick* v. *President of the State Bank*, it was held that a *recital* of publication of notice or service of process in the record, will be sufficient. 27 Ill. 145.

SEC. 15. If any attachment as aforesaid, shall be returned executed, and the estate attached shall not be replevied, or defence shall not be made as this chapter directs, the plaintiff shall be entitled to judgment for his whole debt and costs, having established the existence of such debt by legal testimony, and may thereupon take execution for the same, according to law, as provided in other cases of debt; all the estate attached, and not replevied, shall be sold for, and towards satisfying the plaintiff's judgment, in the same manner as such property is required to be, when taken in execution on a writ of *fieri facias;* where an attachment shall be returned, served in the hands of any garnishee, it shall be lawful, upon his or her appearance and examination in the manner as is by this chapter directed, to enter up judgment,[9] and award execution against every such garnishee, judgment having been first entered against the original debtor, for all sum or sums of money due from him or them to the defendant in the attachment, or in his, her or their custody, or possession, for the use of such original debtor, or so much thereof as shall be of value sufficient to satisfy the debt and costs of the complaint; all goods and effects whatsoever, in the hands of any garnishee or garnishees belonging to such defendant, shall also be liable to satisfy such judgment. The court before which any attachment is pending, shall by the verdict of a jury, or without such jury if the parties agree, assess the value of all goods, chattels and personal effects, not including money, found or confessed to be in the possession or custody of any garnishee, belonging to the defendant, and shall thereupon direct that such garnishee, within some time to be fixed in the order of the court, surrender such goods and chattels and personal effects to the sheriff, to be sold upon execution against the defendant; and if by the sheriff's return to any such writ of execution or otherwise, it shall appear to the satisfaction of the court that such garnishee hath failed to surrender such goods, chattels and personal effects, or any thereof, in compliance with the order of the court, judgment shall thereupon be given against such garnishee for the value so assessed as aforesaid, and execution shall be awarded as in other cases.

SEC. 16. When any garnishee shall be summoned by the sheriff or other officer, in the manner aforesaid, and shall fail to appear and discover on oath or affirmation, as by this chapter is directed, it shall be lawful for the court, after solemnly calling the garnishee, and such court is hereby authorized to enter a conditional judgment against such garnishee; and thereupon a *scire facias* shall issue against such garnishee, returnable to the next term of the court, to show cause, if any he have, why final

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(9) Judgment cannot be rendered against a garnishee except upon filing interrogatories, a conditional judgment, and *scire facias.* *Williams* v. *VanMetre,* 19 Ill. 294.

judgment should not be entered up against him, upon such *scire facias* being duly executed and returned; if such garnishee shall fail to appear accordingly, and discover on oath or affirmation in the manner aforesaid, the court shall confirm such judgment, and award execution for the plaintiff's whole judgment and costs; and if, upon the examination of any garnishee, it shall appear to the court that there is any of the defendant's estate in the hands of any person or persons who have not been summoned, such court shall, upon motion of the plaintiff, grant a judicial attachment, to be levied upon the property in the hands of any such person or persons having any of the estate of the defendant in his or their possession or custody, who shall appear and answer and be liable, as other garnishees; where any garnishee shall deliver to the sheriff all the goods, chattels and effects whatsoever, found or confessed to be in his or her possession, belonging to the defendant, or any part thereof, the same shall be received in discharge of so much of the judgment as the same shall be appraised to, by the jury aforesaid, who shall inquire and return the value thereof, according to the evidence which may be submitted to them relative thereto.

SEC. 17. Whenever judgment shall be rendered against any garnishee, and it shall appear that the debt from him to the defendant in the attachment is not yet due, execution shall not issue against him until twenty days after the same shall become due, nor shall judgment be rendered against a garnishee for a debt founded on a negotiable instrument, unless the same shall be due at the time of rendering the judgment.

SEC. 18. If any such writ of attachment shall be served as aforesaid, it shall and may be lawful for any such plaintiff, at any time during the return term of the said court, to prepare, exhibit and file, all and singular, such allegations and interrogatories in writing, upon which he or she shall be desirous to obtain and compel the answer of any and every garnishee, touching the goods, chattels, moneys, credits and effects of the said defendants, and the value thereof, in his, her or their possession, custody or charge, or from him, her or them due and owing to the said defendant, at the time of the service of said writ or at any time after, or which shall or may hereafter become due, and it shall be the duty of each and every such garnishee to exhibit and file under his oath or affirmation, on or before the third day of the next succeeding term, full, direct and true answers to all and singular the allegations and interrogatories by the said plaintiff supported, exhibited and filed, in the manner hereinbefore directed and described.

SEC. 19. Whenever the plaintiff in any attachment shall allege that any garnishee summoned in such attachment, hath not discovered the true amount of debts due from him to the defendant, or what goods and chattels belonging to the defendant, are in his or her possession, the court shall direct without the formality of pleading, a jury to be impanelled immediately (unless good cause be shown by either party for a continuance) to inquire what is the true amount due from such garnishee to the defendant, and what goods and chattels are in his possession, belonging to the defendant; upon such examination, witnesses may be examined by the respective parties, as in ordinary cases; if the finding of the jury shall be against such garnishee, the court shall grant judgment in the same manner as if the facts found by the jury had been confessed by him or her, on his or her examination, and costs of inquest; and if the jury find in favor of the garnishee, he shall recover his costs against the plaintiff.

SEC. 20. Where any witness resides out of the territory, or out of the county in which any attachment may be pending, and in which the testimony of such witness may be required, it shall be lawful for either party or garnishee in such attachment, on filing interrogatories with the clerk of the court from which such attachment has issued, and giving ten days notice of the time and place of taking such testimony, by serving a copy of such notice on the opposite party, or if such party shall be absent from or reside out of the county, then by affixing a notice in writing thereof on the door of the court house of such county, at least ten days before the day set for the taking thereof, to obtain a commission from the clerk of the court, to take the testimony of such witness or witnesses on such interrogatories; such examination may be read on trial, on motion of either of the parties or garnishee.

SEC. 21. In all cases of attachment, any person other than the defendant claiming any of the personal property attached, may interplead without giving bail,[10] but the property attached shall not thereby be replevied; and the court shall immediately (unless good cause be shown by either party for a continuance) direct a jury to be impanelled, to inquire into the right of property; in all cases where the jury find for the claimant, such claimant shall be entitled to his costs, and where the jury find for the plaintiff, in the attachment, such plaintiff shall recover his costs against such claimant.

SEC. 22. If judgment by default shall be entered on any attachment against the estate of the defendant, in any court of this territory, no execution shall issue thereon, except against the goods and chattels, lands and tenements, on which the attachment may have been served or against a garnishee or garnishees who shall have money or other property in his or their hands belonging to the defendant, unless the defendant, or in

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(10) The interpleader is to be taken as true unless traversed. *Williams* v. *VanMetre*, 19 Ill. 293.

case of a corporation, some officer or agent thereof, shall have been actually served with the writ of attachment, in which case the judgment shall have the same force and effect as if the defendant had been served with a summons or *capias ad respondendum* in an action of debt or assumpsit.

SEC. 23. When any goods and chattels shall be levied on by virtue of an attachment, and the sheriff or other proper officer in whose custody such goods and chattels are, shall be of opinion that the same are of a perishable nature, and in danger of immediate waste and decay, such sheriff or other proper officer as aforesaid shall summon three respectable householders of his county, who shall examine the goods and chattels so levied on, and if the said householders shall on oath or affirmation, certify that, in their opinion they are of a perishable nature and in danger of immediate waste and decay, and if the person or persons to whom such goods and chattels belong, his, her or their agent or attorney, shall not within twenty days after serving such attachment replevy the same, then such goods and chattels shall be sold at public vendue by the sheriff or other proper officer, he having first advertised such sale at the court-house, and two other public places in his county, at least ten days before the sale; the money arising from such sale shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court to which the process shall be returnable, there to abide the event of such suit.

SEC. 24. When any sheriff or other officer shall serve an attachment on horses, cattle or live stock, and the same shall not be immediately replevied or restored to the debtor, it shall and may be lawful for such officer, and he is hereby required, to provide sufficient sustenance for the support of such live stock, until the same shall be sold or otherwise legally disposed of or discharged from such attachment; he shall receive therefor a reasonable compensation, to be ascertained and determined by the court out of which the attachment issued, and the same shall be charged in the fee-bill of such officer, and shall be collectable as a part of the costs in the attachment.

SEC. 25. Any defendant, against whom an attachment may be sued out under the provisions of this chapter, or garnishee, may avail himself, in his defence, of any set-off properly pleadable by the laws of this territory, notwithstanding such set-off may not be due at the time of suing out such attachment, or at the trial thereof; any claim, due or not due, may be set-off by the garnishee, whether it exists against the plaintiff or defendant in the attachment.

SEC. 26. In all cases where more than one attachment shall be issued against the same person or persons, and returned to the same term of the court to which they are returnable, or when a judgment in a civil action shall also be rendered at the same term against the defendant, who is the same person and defendant in the attachment or attachments, the court shall direct the clerk to make an estimate of the several amounts each attaching or judgment creditor will be entitled to, out of the property of the defendant attached, either in the hands of any garnishee or otherwise, after the sale and receipt of the proceeds thereof by the sheriff, calculating such amount in proportion to the amount of their several judgments, with costs, as the same will respectively bear to the amount of the sum received, so that each attaching and judgment creditor will receive his just part thereof in proportion to his demand,[11] the clerk shall thereupon certify the several amounts thereof to the sheriff who shall pay over to the respective parties the several sums so certified, and indorse such payments on their respective executions: *Provided*, That when the property sought to be attached, shall have been removed from the county in which the attachment issued, and shall be overtaken and returned to such county, the claim of such attaching creditor or creditors shall have priority over other attachments or judgments.

SEC. 27. On proof being made, before any judge or justice of the peace, or clerk of the district court, within this territory, that a debtor is actually absconding, or concealed, or stands in defiance of an officer duly authorized to arrest him on civil process as aforesaid, or has departed this territory with the intention of having his effects and personal estate removed out of this territory, or intends to depart, with such intention, it shall be lawful for the clerk to issue, and the sheriff or other officer to serve, an attachment against such debtor, on a Sunday as on any other day, as is directed in this chapter.

SEC. 28. The plaintiff or defendant in any attachment, the garnishee and the sheriff, or either of them, who may feel aggrieved by the judgment of the court, may prosecute writs of error, and take appeals, as by law is provided in other cases; and trials of the right of property may be had in the same manner as when property is taken in execution.

SEC. 29. Any defendant in attachment, desiring the return of the property attached, may, at his option, instead of the bond

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(11) Attaching creditors whose attachments are returnable, and returned to the same term, share *pro rata* in the proceeds of the property without reference to the date of final recovery in their several attachments; but to entitle a plaintiff in a civil action to share in such proceeds, he must procure judgment at the term to which the attachments are returnable. *Rucker* v. *Fuller*, 11 Ill. 228.

The right to distribution extends as well to the proceeds of a garnishment, as if real or personal property attached. *Stahl* v. *Webster*, 11 Ill. 516.

If one creditor procure judgment before the determination of the other attachments, the court may properly order the sheriff to retain the proceeds until all attachments shall have been adjudicated, and an order of distribution entered. *Warren* v. *Iscarian Community*, 16 Ill. 114.

required in the ninth section of this chapter, give like bond and security, in a sum sufficient to cover the debt and damages sworn to in behalf of the plaintiff, with all interests, damages and costs of suit, conditioned that the defendant will pay the plaintiff the amount of the judgment and costs which may be rendered against him in that suit, on a final trial, within ninety days after the judgment shall be rendered; in term time, a recognizance, in substance as aforesaid, may be taken in open court and entered of record; in which case, the court shall approve of the security and recognizance made to the plaintiff; in either case, the attachment shall be dissolved, and the property taken, restored, and all previous proceedings, either against the sheriff or against the garnishees, set aside, and the cause shall proceed as if the defendant had been seasonably served with a writ of summons.

SEC. 30. Plaintiffs in any action of debt, covenant or trespass, or on the case upon promises, having commenced their action or actions by summons, or in any *scire facias* to make the defendant therein party to a judgment theretofore rendered, having issued such *scire facias*, may at any time pending such suit, and before judgment therein, on filing in the office of the clerk where such action is pending, a sufficient affidavit and bond, sue out an attachment against the lands and tenements, goods and chattels, rights, moneys, credits and effects of the defendant, which attachment shall be entitled in the suit pending, and be in aid thereof, and such proceedings shall be thereupon had as are required and permitted in original attachments, in all things as near as may be; and if it shall appear that the defendant or defendants have not been served with process in the original suit, notice of the pendency of such suit, and of the issue and levy of the attachment shall be published as is required in cases of original attachment.

SEC. 31. When any attachment has issued out of the district court, in any county, it shall be lawful for the plaintiff, at any time before final judgment, without filing additional bond or affidavit, to sue out a writ or writs of attachment to any other county or counties, or an *alias* or *pluries* writ to the same county, which shall be levied or served as the plaintiff may direct, and returned as other writs of attachment:[12] *Provided*, That every such writ shall be endorsed by the clerk with a memorandum of what estate of the defendant, if any, hath been attached under any former writ of attachment issued in the same cause, and the officer to whom the same is directed shall thereon attach

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(12) The court acquires no jurisdiction in an attachment proceeding by the mere levy of the writ issued to a foreign county; there must be service upon the person, or a levy upon property in the county from which the writ issues. *Hinman* v. *Rushmore*, 27 Ill. 509. *Fuller* v. *Langford*, 31 Ill. 250.

only so much of the defendant's estate as together with the estate already attached may be sufficient to satisfy the plaintiff's demand with costs.

SEC. 32. The affidavit required in the first section of this chapter may be sworn to before any officer authorized by the laws of this territory to administer oaths, or by any officer of any state, territory or district of the United States, the fact that the person administering such oath is duly authorized, to be proved in the same manner as in the acknowledgment and authentication of deeds.

SEC. 33. When two or more persons, not residing in this territory, are jointly indebted, either as joint obligors, partners or otherwise, then the writ or writs of attachment shall and may be issued against the separate estate of such debtors, or any of them, or against the heirs, executors or administrators of them or either of them, and the lands and tenements, goods and chattels, rights, credits and effects of such debtors, or either of them, shall be liable to be seized and taken for the satisfaction of any just debt or other legal demand, and may be sold to satisfy the same.

SEC. 34. This chapter shall be construed in all courts in the most liberal manner for the detection of frauds.

SEC. 35. The provisions of the chapter concerning practice in civil cases, of the laws of this territory, shall be applicable as well to proceedings in attachment, as to other cases.

SEC. 36. Nothing in this chapter shall be construed to require notices to be published when the writ is returned personally served on the defendant or defendants.

SEC. 37. No citizen of this territory while absent in the military service of the United States or of this territory, shall by reason of such absence be liable to suit by attachment.

SEC. 38. Whenever any action hath been, or shall hereafter be commenced by attachment, or whenever any attachment hath issued or shall issue in aid of any action at law, the defendant may by a plea in abatement traverse any of the facts set forth in the affidavit whereon such attachment issued or shall issue, and upon issue of fact joined thereon, the court in which such suit is pending shall cause a jury to be impanelled, who shall try such issue of fact, and none other; in case the jury so impanelled shall find for the plaintiff upon that issue, the court shall order that the defendant plead in bar, by some day to be fixed by the court; if such jury find for the defendant, the court shall order that the property attached be released, and the garnishees, if any, discharged, and that the defendant plead in bar or demur, by some day to be fixed by the court, and thereupon the cause shall proceed as if the same had been commenced by summons, and no attachment had issued therein.

SEC. 39. This chapter shall take effect and be in force from and after its passage.

Prior Statutes Repealed. An act regulating the mode of proceeding in Attachment in the District Court. Approved Oct. 29, 1861. Laws 1861, p. 201.

An act to amend an act entitled An act regulating the mode of proceeding in Attachment in the District Court. Approved March 2, 1864. Laws 1864, p. 44.

An act to amend an act entitled An act regulating the mode of proceeding in Attachment in the District Court. Approved Oct. 29, 1861. Approved Feb. 8, 1865. Laws 1865, p. 46.

CHAPTER VII.

ATTORNEYS AT LAW.

SECTION

1. No person to practise as an attorney in any court of record without a license.
2. Qualifications of applicants for admission to the bar.
3. Supreme court to appoint a committee of attorneys in each district, to examine applicants for admission as attorneys.
4. Clerk of supreme court to keep a roll of attorneys.
5. No person to practise as an attorney whose name is not subscribed to the roll; supreme court may strike any attorney from the roll for malfeasance in office.
6. Attorney failing to pay over moneys collected by him as attorney, may be stricken from the roll; notice to be given; proceedings in such case.
7. Attorney charged with malfeasance shall receive notice of charges, be allowed time to procure testimony, and shall be heard in his defence.
8. Judges, attorneys and other officers of court liable to arrest, as other persons, save while going to, attending and returning from court.
9. Certain officials not permitted to practise in certain courts; attorneys to take an oath; oath to be endorsed on license by the person administering it.
10. Oath of office.
11. Attorneys of other states may be admitted to practise without examination.
12. Fees collected by any unlicensed person, as attorney, recoverable back; false signing of any certificate or license, forgery.
13. Plaintiffs and defendants may appear in person; this act not to affect attorneys heretofore admitted.
14. Admission to practise *ex gratia*.
15. Sheriffs, etc., having in custody any prisoner charged with criminal offence, to permit him to see any attorney he may desire; penalty for violating this provision.
16. No attorney to become surety on official bond of sheriff, etc., or in any bail bond or recognizance, without leave of some judge of district court.
17. Attorneys have a lien on moneys collected or judgment recovered, for fees.
18. No license as an attorney required to practise in probate courts.

SECTION 1. No person shall be permitted to practise as an attorney or counsellor at law, or to commence, conduct, or defend any action, suit, or plaint in which he is not a party concerned, in any court of record within this territory, either by using or subscribing his own name, or the name of any other person without having previously obtained a license for that purpose from some two of the justices of the supreme court, which license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all the courts of record within this territory, and there to practise as an attorney and counsellor at law, according to the laws and customs thereof, for and during his good behavior in said practice, and to demand and receive all such fees as are or hereafter may be established for any services which he shall or may render as an attorney and counsellor at law in this territory.

SEC. 2. No person shall be entitled to receive a license as aforesaid until he shall have obtained a certificate from the court of some county of his good moral character, also a certificate from one or more reputable counsellors at law, that he has been engaged in the study of the law for two successive years prior to the making of such application.

SEC. 3. It shall be the duty of the supreme court to appoint a standing committee of three attorneys at law for each judicial district of this territory, whose duty it shall be to examine all applicants for license as aforesaid; and if upon such examination a majority of said committee shall deem the applicant qualified to practise as an attorney and counsellor at law in the courts of this territory, they shall sign a certificate to that effect, and transmit the same to the clerk of the supreme court.

SEC. 4. It shall be the duty of the clerks of the supreme court to make and keep a roll or record, stating at the head or commencement thereof that the persons whose names are therein written have been regularly licensed, and admitted to practise as attorneys and counsellors at law within this territory; and that they have duly taken the oath to support the constitution of the United States, and the organic act of this territory, and also the oath of office as prescribed by law, which shall be certified and endorsed on said license.

SEC. 5. And no person whose name is not subscribed to or written on said roll, with the day and year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practise as an attorney or counsellor at law within this territory, under the penalty hereinafter mentioned, anything in this chapter to the contrary notwithstanding; and the justices of the supreme court, in open court, shall have power, at their discretion, to strike the name of any attorney or counsellor at law from the roll, for malconduct in his office.

SEC. 6. In all cases where an attorney of any court of this territory, or solicitor in chancery, shall have received, or may hereafter receive in his said office of attorney or solicitor, in the course of collection or settlement of any claim left with him for collection or settlement, any money or other property belonging to any client, and shall, upon demand made and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested to apply to the supreme court of this territory for a rule upon the said attorney or solicitor, to show cause at a time to be fixed by the said court, why the name of said attorney or solicitor should not be stricken from the roll, a copy of which rule shall be duly served upon said attorney or solicitor at least ten days previous to the day upon which said rule shall be made returnable; and if upon the return of said rule it shall be made to appear to the said court that such attorney or solicitor has improperly neglected or refused to pay over or deliver said money or property, so demanded as aforesaid, it shall be the duty of the said court to direct that the name of the said attorney or solicitor be stricken from the roll of attorneys in said court.

SEC. 7. Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his own defence, and allowed reasonable time to collect and prepare testimony for his justification; and any attorney whose name shall at any time be stricken from the roll, by order of the court, in the manner aforesaid, shall be considered as though his name had never been written thereon, until such time as the said justice, in open court, shall authorize him to sign or subscribe the same.

SEC. 8. All attorneys and counsellors at law, judges, clerks and sheriffs, and all other officers of the several courts within this territory shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and proceeded against in the same courts and in the same manner as other persons are, any law, usage or custom to the contrary notwithstanding: *Provided, nevertheless,* Said, judges, counsellors, attorneys, clerks, sheriffs, and other officers of said courts, shall be privileged from arrest while attending courts, and while going to and returning from court.

SEC. 9. No person who holds a commission as judge of any district court, shall be permitted to practise as attorney or counsellor at law in the court in which he presides as judge of the district court, nor shall any coroner, sheriff, deputy sheriff, jailor or constable, be permitted to practise as aforesaid in the county in which he is commissioned or appointed, nor shall any clerk of the supreme court or district court be permitted to practise as an attorney or counsellor at law in the court in which he is clerk; and no person shall be permitted to enter his name on the roll or record to be kept as aforesaid by the clerk of the supreme court, or do any official act appertaining to the office of an attorney or counsellor at law, until he hath taken an oath to support the constitution of the United States, and the organic act of this territory; and the person administering such oath shall certify the same on the license, which certificate shall be a sufficient voucher to the clerk of the supreme court to enter or insert, or permit to be entered or inserted on the roll of attorneys and counsellors at law the name of the person to whom such certificate is made.

SEC. 10. The following oath of office shall be administered to every attorney and counsellor at law before they subscribe the respective rolls, to wit: I swear (or affirm) that 1 will, in all things, faithfully execute the duties of an attorney and counsellor at law to the best of my understanding and abilities.

SEC. 11. Any person producing a license or other satisfactory voucher, proving that he hath been regularly admitted an attorney at law in any court of record within the United States, and that he is of good moral character, may be licensed and permitted to practise as a counsellor and attorney at law, in any court in this territory, without examination.

SEC. 12. If any person not licensed as aforesaid shall receive any money or any species of property as a fee or compensation for services rendered, or to be rendered by him as an attorney or counsellor at law within this territory, all money so received by him shall be considered as money received to the use of the person paying the same, and may be recovered back with costs of suit, by an action for money had and received; and all property conveyed or delivered, for the purpose aforesaid, or the value thereof, may be recovered back with costs of suit, by the person conveying or delivering the same, by action of detinue or trover and conversion, and the person receiving such money or property, shall forfeit threefold the amount or value thereof, to be recovered with costs of suit, before any magistrate, if within a magistrate's jurisdiction, but if not, in any court of record within the territory, by action of debt *qui tam*, the one half to the use of the person who shall sue for and recover the same, and the other half to the use of the county in which such suit shall be brought; and if any person shall sign, or cause to be signed the name of any attorney or either of the justices of the supreme court to any certificate or license, provided for in this chapter, with intent to deceive, such person shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

SEC. 13. Plaintiffs shall have the liberty of prosecuting, and defendants shall have the privilege of defending, in their proper persons, and nothing herein contained shall be so construed as to effect any persons heretofore admitted to the degree of attorney or counsellor at law in this territory so as to subject them to further examination, or make it necessary for them to renew their license.

SEC. 14. Whenever any counsellor at law residing in any of the adjacent states or territories, may have any business in any of the courts of this territory, he may be admitted on motion for the purpose of transacting such business, and none other.

SEC. 15. All public officers, sheriffs, coroners, jailors, constables, or other officers or persons having in custody any person committed, imprisoned or restrained of his liberty, for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practising attorney at law in this territory, whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody; any officer violating this provision shall forfeit and pay one hundred dollars to the person aggrieved, to be recovered by action of debt, in any court of competent jurisdiction.

SEC. 16. No attorney or counsellor at law or solicitor in chancery shall become surety in any bond or recognizance of any sheriff, constable or coroner, or in any bond or recognizance for the appearance of any person or persons charged with any public offence; or upon any bond or recognizance authorized by any statute, to be taken for the payment of any sum of money into court, in default of the principal, without the consent of a judge of the district court first had, approving said surety.

SEC. 17. All attorneys and counsellors at law shall have a lien upon any money or property in their hands, or upon any judgment they may have attained belonging to any client, for any fee or balance of fees due, or any professional services rendered by them in any court of this territory, when said lien may be enforced by the proper civil action.

SEC. 18. Nothing in this chapter shall be construed so as to prevent any male citizen over the age of twenty-one years, of good moral character, from practising as an attorney in the probate courts of this territory, without having obtained a license as an attorney, as provided herein.

Prior Statutes Repealed. An act concerning Attorneys and Counsellors at Law. Approved Oct. 21, 1861. Laws 1861, p. 97.

An act to amend an act entitled An act concerning Attorneys and Counsellors at Law. Approved Feb. 5, 1866. Laws 1866, p. 45.

CHAPTER VIII.

AUCTIONS.

SECTION
1. Every auctioneer licensed to sell stock, to keep a registry for the entry of stock offered for sale.
2. What shall be recorded in register.

SECTION
3. Fees of auctioneer for registering stock; stock register to be open for inspection; and shall be evidence in court.

SECTION	SECTION
4. Penalty for violation of section one of this act.	6. The record to be open to the inspection of all persons.
5. Auctioneers and commission merchants and those who keep a stand for public sale of stock, to keep a registry of sales.	7. Penalty for violation of this act.
	8. Disposition of penalties arising under this act; appeal allowed.

SECTION 1. Any person who may be licensed in this territory to keep an auction, where horses, mules or cattle are sold at auction, shall open a book called a "stock register," in which he shall describe minutely every animal he shall so offer for sale.

SEC. 2. In such register shall be recorded the person's name who brings forward such animal for sale, and whether or not he is the owner of the same, and if not the owner, the name of the owner with his residence; also, the color, brand or marks, size and age, as near as may be, of the animal so offered for sale.

SEC. 3. The keeper of such auction shall be entitled to charge and receive, for the registering of each animal so entered in his register, before he shall offer the same for sale, the sum of twenty-five cents, and all "stock registers" shall be open for inspection and reference to any person who may wish to examine the same, and shall be evidence in any court where the trial of the right of property may be had.

SEC. 4. Any person who shall hereafter offer for sale at auction, any animal named in section one of this chapter, without first having complied with the requirements of this chapter, shall, upon conviction thereof, before a court of proper jurisdiction, be fined in the sum of twenty-five dollars, to be collected as other fines, and paid into the county treasury for the use of the county.

An Act to compel the keepers of Auction Stands and Commission Stables or Stands to keep a record of their proceedings.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 5. (I.) All auctioneers, commission merchants, and other persons who shall keep a place or stand for publicly vending horses, mules and horned cattle, or either of them, shall, in a book kept for the purpose, keep a true and faithful record of all the animals purchased or sold by them, or under their control, which record shall contain a brief description of the animal, including its age, value and marks, brands and date of purchase and sale, and the name and residence of the seller and purchaser, in each case.

SEC. 6. (II.) The record provided in section one of this act, shall be open to the inspection of all persons during the ordinary business hours of the day.

SEC. 7. (III.) Any person offending against the provisions of this act, shall be fined in a sum not less than ten nor more than one hundred dollars, in the discretion of the court, to be recovered in any court of competent jurisdiction, with costs of suit.

SEC. 8. (IV.) All fines recovered under the provisions of this act, shall be paid into the county treasury of the proper county, and appeals shall be allowed to the district court, as in civil cases.

Prior Statutes Repealed. An act to regulate the sale of horses, mules and cattle at auction in Colorado Territory. Approved Aug. 15, 1862. Laws 1862, p. 42.

CHAPTER IX.

AUDITOR AND TREASURER.

SECTION

ARTICLE I.

1. Auditor and treasurer to be appointed biennially; term of office; reside and keep office at seat of government; oath of office.
2. Bond.
3. Security to make oath as to his responsibility.
4. Secretary to approve bond and file same.
5. No commission to issue until bond given.
6. To have a seal.
7. Allowance of stationery, etc.

ARTICLE II.

1. Auditor; general accountant of territory.
2. To report to general assembly at each session, 1st, condition of revenue, and expenditures for two years preceding; 2d, the public debt; 3d, estimates of revenue and expenditures for the two succeeding years; 4th, means of reducing expenses, etc.; 5th, the amount of each appropriation, amount expended and unexpended thereon; 6th, amount chargeable to each county.
3. General powers and duties.

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1. Treasurer; his general powers and duties; to report to each session of legislative assembly.
2. To give duplicate receipts for money paid into treasury.
3. Treasurer to keep a cash book; all sums of money received to be entered thereon.
4. To give receipts for all such moneys; what matters to be set forth in such receipts.
5. To report monthly to auditor, the moneys received by him.
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7. To keep a register of warrants; all warrants presented to be entered therein.
8. Warrants presented for payment and not paid, to be endorsed with the reasons of non-payment.
9. Penalties for violation of the foregoing sections.

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3. Auditor may issue warrant of distress against delinquent, directed to sheriff of proper county.
4. Such sheriff to collect by distress and sale of goods, chattels and real estate of delinquent and his securities.
5. Notice of sale; money collected when to be paid over.
6. Fees of officers executing warrants.
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8. No set-off allowed against territory unless it has been submitted to auditor for settlement; *proviso.*
9. Auditor in settling account may examine parties and witnesses; may issue subpœnas.
10. Accounts settled, etc., to be examined by auditor; copies to be given.
11. Auditor to draw warrant for amount of accounts allowed, and all salaries, etc., allowed by law.
12. No warrants to be drawn unless money appropriated by law; warrants not to exceed amount of appropriation.
13. Auditor shall, at request of person dissatisfied, certify claims rejected to the general assembly.
14. May give certificate of indebtedness, when no appropriation has been made.
15. Shall report delinquent collectors of revenue to general assembly.
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ARTICLE V.

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to be made in their official books of account; vouchers to be cancelled.

10. Governor may appoint auditor and treasurer *pro tem.*

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13. Certificate, when legislative assembly not in session.

14. Legislative assembly to approve certificate of settlement made in vacation.

15. Auditor and treasurer *pro tem.*, compensation of.

16. Compensation of persons appointed by secretary to make settlement under section eleven.

17. Auditor and treasurer have power to administer oaths.

18. Treasurer to pay warrants out of funds applicable to such use in order in which warrants are presented.

19. Auditor to issue warrants in any sum party may desire, *proviso;* form of warrant.

20. Warrants to be received at par for all sums due territory.

21. No collector of revenue to deal in auditor's warrants; penalty.

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22. Every warrant to be paid in its own year; no warrant to issue above the estimate reported by auditor to legislature.

23. Auditor's warrants to draw interest.

24. Fiscal year to commence on first day of January.

25. Term of auditor and treasurer, when to commence.

26. Salary of auditor and treasurer.

27. Penalty for failure of auditor and treasurer to make report.

28. Officers required to make annual reports to legislative assembly, to report to governor in the years intervening between sessions of assembly.

29. Governor to appoint three persons to examine accounts.

30. Persons appointed, to be sworn.

31. Governor authorized to remove auditor or treasurer, if it appear that either is incompetent, or has neglected or failed in his duties.

32. Governor to cause abstract of the reports to be published in newspaper.

33. Compensation of persons appointed.

34. Acts inconsistent with this act repealed.

ARTICLE I. APPOINTMENT, TERM, BOND.

SECTION 1. There shall be appointed, during the present session of the legislative assembly, and every regular session hereafter, by the governor, and with the advice and consent of the legislative council, a territorial treasurer and territorial auditor of public accounts, who shall hold their offices for two years, and until their successors are duly appointed and qualified, who shall reside, and keep their respective offices at the seat of government; they shall be commissioned by the governor, and take the oath of office prescribed by law, which shall be indorsed on their several commissions.

SEC. 2. The treasurer shall give bond to the territory of Colorado, in the penal sum of twenty thousand dollars, conditioned that he will duly account for all moneys coming into his hands by virtue of his office; and the auditor shall give like bond in the sum of ten thousand dollars, conditioned for the faithful discharge of the duties of his office, which several bonds and certificates of appointment, with the oath of office, shall be deposited in the office of the secretary of the territory.

SEC. 3. Each security when he shall sign such bond shall write down in words, at length opposite his name, on the left, the amount he is willing to swear he is worth, and shall make oath, either before the secretary, or before some judge, or justice of the peace, in writing, to be laid before the secretary, that he believes himself to be worth the sum written opposite his name, after the payment of all the debts for which he is in anywise liable.

SEC. 4. The secretary of the territory shall indorse on the bond his approval thereof, stating the time of approval, and file the same in his office.

SEC. 5. No commission shall issue to an auditor or treasurer until he shall have given bond and security as required by law.

SEC. 6. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers, and documents, certified from either of such officers respectively.

SEC. 7. The auditor and treasurer shall be allowed the sum of one hundred dollars per annum each, out of the territorial treasury, to pay for books, stationery, furniture, office rent and fuel.[1]

ARTICLE II. OF THE AUDITOR AND HIS DUTIES.

SECTION 1. The auditor of public accounts, is the general accountant of the Territory, and the keeper of all public account-books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue debt, and fiscal affairs not required by law to be placed in some other office or kept by some other person.

SEC. 2. He shall digest, prepare and report to the general assembly at the commencement of each regular session: *First*, a detailed and full statement of the condition of the revenue and the amount of the expenditures for the the two preceding years. *Second*, a full and detailed statement of the public debt. *Third*, estimates of the revenue and expenditures for the two succeeding fiscal years, and the probable amount of revenue derivable from the various sources of revenue. *Fourth*, such plans as he may deem expedient for the support of the public credit, for lessening the public expenses, for promoting frugality and economy, in the public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the territory. *Fifth*, a tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended. *Sixth*, a tabular statement showing the amount of revenue chargeable to each county, for the two preceding fiscal years, the aggregate amount of each object of taxation, together with the tax due on the same.

SEC. 3. He shall, *First*, audit and settle all claims against the territory, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers and persons. *Second*, draw all warrants upon the treasury for money, except only, in cases otherwise expressly provided by law. *Third*, express in the body of any warrant which he may draw upon the treasury for money, the

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(1) See An act to provide for the salary of the territorial auditor, and the contingent expenses of his office. Approved Jan. 10, 1868, under the chapter concerning Fees and Salaries.

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territorial treasurer, such territorial treasurer shall forthwith enter the same in a cash-book, to be kept by him for that purpose, at his office, and in each entry of any such moneys, he shall set down and state the amount of money, and the nature of the funds wherein the same are paid, whether gold or silver coin, United States treasury notes, or other currency, territorial warrants, auditor's warrants, or other certificates, or evidences of territorial indebtedness, and the amount of each of such several kinds of coin, treasury notes, bank-bills, or warrants, or certificates of indebtedness, the date when, and the person by whom the same were paid. Every such cash-book shall, at all reasonable hours of the day, be open to the inspection and examination of every person desiring to inspect the same.

SEC. 4. The territorial treasurer shall, at the time of every such payment, make out and deliver to the persons paying such moneys, a receipt therefor, in which he shall set forth all of the several matters required to be entered in such cash-book. If the person paying such moneys, be a public officer, every such receipt shall be in duplicate, and the officer receiving the same shall forthwith deliver one copy thereof, or transmit the same by mail to the auditor of the territory, who shall file and preserve such receipt in his office.

SEC. 5. The territorial treasurer shall report to the auditor of the territory monthly, on the last day of each month, the amount of all moneys received by him during the month, the name of the person from whom each of such sums was received, the date of such receipt, and the several kinds of coin, treasury notes, bank-bills, auditor's warrants, or other like certificates, or evidences of indebtedness, in which the same were paid and the amount of each kind; and all such monthly reports shall, by the auditor, be filed and preserved in his office, and the same shall, at all reasonable hours, be open to the examination of any person desiring to examine the same.

SEC. 6. Every fund in the hands of the territorial treasurer for disbursement, shall be paid out in the order in which the warrants drawn thereon, and payable out of the same, are presented for payment.

SEC. 7. The territorial treasurer shall keep, in his office, a book to be called the "register of warrants," and wherein shall be set down, and entered, immediately upon the presentation thereof, every auditor's warrant, or other like certificate, or evidence of territorial indebtedness, presented to such treasurer for payment, (whether the same be paid at the time of such presentation or not,) with the amount thereof, the name of the person to whom the same is, by the terms thereof payable, the name of the persons by whom the same is presented, the number and date of such warrant, or certificate, and the date of the presentation thereof for payment. Every warrant shall be entered in the order of the presentation thereof, and upon the line next following that whereon is entered the warrant presented last before it, and without any blank line intervening. Such "register of warrants" shall, at all reasonable hours of the day, be open to the inspection and examination of every person desiring to inspect or examine the same.

SEC. 8. Upon the presentation of any auditor's warrant, or other certificate, or evidence of indebtedness, for payment, the treasurer shall, if the same be not thereupon paid by him, indorse on such warrant the date when the same was presented for payment, and the reason for the non-payment thereof, and shall sign such indorsement, and re-deliver such warrant, or certificate of indebtedness, to the bearer thereof.

SEC. 9. If any territorial treasurer shall fail, neglect, or refuse to keep such cash-book, as required by this article, or shall fail, neglect, or refuse to enter therein, any sum of money which may be paid to him, by virtue of his office, or shall wilfully make any false entry thereof, or fail, neglect, or refuse to exhibit the same to any person desiring to inspect the same, or shall refuse to permit any person to examine such cash-book, at any reasonable hour of the day, or shall fail, neglect, or refuse to issue such receipt, or duplicate receipts, as required by this article, or shall make any false receipt of any money received by him, by virtue of his office, or shall fail, neglect, or refuse to render such monthly report of the moneys received by him, in virtue of his office, in any month, as required by this article, or shall make any false report thereof, or shall fail, neglect, or refuse to keep a "register of warrants," as required by this article, or shall fail, neglect, or refuse to enter therein, any warrant presented to him for payment, in the order, and at the time when the same is so presented, or shall fail, neglect, or refuse to indorse such warrant, as required by this article, or shall make any false entry of any such warrant, in such register, or shall falsely indorse the same, or shall fail, neglect, or refuse to permit any person to inspect and examine such register, at any reasonable hour of the day, at his office, or shall refuse, or neglect to pay any such warrant, in the order in which the same ought to be paid, or shall pay any such warrant, there not then remaining in the treasury, money sufficient to pay all warrants, or orders, drawn upon, or payable out of the same fund, and previously presented; every such treasurer, so offending, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than fifty dollars, and not exceeding one thousand dollars, and imprisoned until such fine is paid, and, upon any such conviction, the court may adjudge that the treasurer, so convicted, be removed from his office.

ARTICLE IV. OF THE SETTLEMENT OF CLAIMS AND ACCOUNTS.

SECTION 1. All collectors of the revenue, and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor on or before the fifteenth day of December, in each year, to be audited, adjusted and settled; and the auditor shall proceed without unnecessary delay to audit, adjust and settle the same, and report to the treasurer the balance found due.

SEC. 2. If any of the persons mentioned in the preceding section shall fail to pay the amount so found due, into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the territory the amount of the commission allowed him by law, and also five per centum per month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid, until actual payment, and the auditor shall charge such delinquent accordingly.

SEC. 3. The auditor shall, immediately after such delinquency shall occur, issue a warrant of distress against such delinquent and his securities, directed to the sheriff or coroner, as the case may require, of the proper county, or if there be no sheriff or coroner, or they shall be disqualified to act, then to the sheriff of some adjoining county, (who is authorized and required to execute the same, and who, together with his securities, shall be liable on his official bond, in the same manner and to the same extent as if the writ were to be executed in his own county,) stating therein the amount due and the penalties and forfeitures.

SEC. 4. Such sheriff or coroner shall levy and collect the same, together with the penalties and forfeitures stated in the writ, by the distress and sale of goods and chattels and real estate of such delinquent; and for the want of sufficient goods and chattels and real estate of the delinquent to satisfy such warrant, then by distress and the sale of the goods and chattels and real estate of the securities of such delinquent.

SEC. 5. Property distrained shall be advertised and sold in such manner and at such time and place as is prescribed by law for advertising and selling property, by virtue of a writ of *fieri facias;* and the sum collected shall be accounted for, and paid into the treasury within fifteen days after its collection, unless the fifteenth day of December shall intervene, and in that event, then on or before that day.

SEC. 6. The officer collecting money by virtue of a distress warrant shall receive the same mileage for paying the same into the treasury, as is allowed by law to collectors for the same service; but if such officer shall be the collector of the revenue, he shall not receive such mileage if such money be paid at the time of paying the revenue.

SEC. 7. Persons having claims against the territory shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within one year after such claim shall accrue, and not afterwards.

SEC. 8. In all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory, as a set-off, but such as have been exhibited to the auditor, and by him allowed or disallowed; except only in cases where it shall be proved to the satisfaction of the court that the defendant, at the time of the trial, is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor by absence from the territory, sickness or unavoidable accidents.

SEC. 9. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses and others, on oath or affirmation, touching any matters material to be known in the settlement of such account; and for that purpose may issue subpœnas, and compel witnesses to attend before him and give evidence, in the same manner and by the same means allowed by law to courts of record.

SEC. 10. All accounts, vouchers and documents settled or to be settled by the auditor, shall be preserved in his office; and copies thereof, authenticated by the official seal, shall be given to any person interested therein, who may require the same.

SEC. 11. In all cases of accounts audited and allowed against the territory, and in all cases of grants, salaries, pay and expenses, allowed by law, the auditor shall draw a warrant on the treasurer for the amount due, in the form required by law.

SEC. 12. No warrant shall be drawn by the auditor, or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for, or paid under one head, ever exceed the amount appropriated by law for that purpose.

SEC. 13. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account or credit, the auditor shall, at the request of such person, certify his decision, with his reasons therefor, specifying the items rejected, if less than the whole, under the seal of his office, and refer the same to the general assembly.

SEC. 14. In all cases where the laws recognize a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit and adjust the same, and give the claimant a certificate of the amount thereof, under his official seal, if demanded, and shall report the same to the general assembly with as little delay as possible.

SEC. 15. The auditor shall report to the general assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue, and other holders of public money, whose accounts have remained unsettled for the space of six months after they ought to have been settled according to law, and the reasons therefor.

SEC. 16. When the collectors of the revenue, or other holders of the public money, shall fail to pay the amount due by them into the treasury, within the time prescribed by law, the auditor shall, within thirty days after such default, publish for one week, in two newspapers printed at two of the most public places in the territory, a list of all such defaulters, with the amounts respectively due from each.

ARTICLE V. MISCELLANEOUS PROVISIONS.

SECTION 1. The auditor and treasurer shall have free access to each other's offices, for the inspection of all books, accounts and papers, which they respectively contain; and free access to all the other offices of the territory, for the inspection of such books, accounts and papers as concern any of their duties.

SEC. 2. The auditor and treasurer shall each keep a letter-book, in which shall be recorded all official letters which they may write.

SEC. 3. If the auditor shall knowingly issue any warrant upon the treasury, not authorized by law, he shall, upon conviction thereof, be fined in a sum not exceeding fourfold the amount of such warrant, and imprisoned for any length of time, not exceeding one year, and shall be deemed guilty of a misdemeanor in office.

SEC. 4. If the treasurer shall wilfully and unlawfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof, fourfold the amount of such warrant, to be recovered by action of debt against the treasurer and his securities on his official bond, or otherwise, according to law, and the treasurer shall be deemed guilty of a misdemeanor in office.

SEC. 5. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, or shall receive any fee or reward for the performance of any legal duty, not allowed by law, or by color of his office shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall forfeit to the territory any sum not exceeding one thousand dollars, and shall be deemed guilty of a misdemeanor in office.

SEC. 6. The amount of every account audited, adjusted and found due the territory, according to this chapter, with the penalties and interests thereon, is declared to be a lien upon the real estate of the person charged with the same, from the time that suit shall be commenced for the recovery thereof.

SEC. 7. Previous to each regular session of the general assembly, the secretary of the territory shall select and notify, by giving ten days notice, one member elected to the council and two members elected to the house of representatives, to attend at the seat of government six days before the commencement of the session, for the purpose of settling with the auditor and treasurer.

SEC. 8. The members thus elected, before entering on such duties, shall take the oath required by the constitution, of members of the legislative assembly, which shall be indorsed and certified on their certificates of election.

SEC. 9. The members selected, or a majority of them, shall make such settlement, and make to each house of the legislative assembly a report thereof, and if they approve the same, shall cause proper entries to be made in the books of the auditor's and treasurer's offices, showing the result of such settlement, and immediately thereupon shall cause all vouchers which shall have been examined and allowed in such settlement to be defaced, by writing in large letters on the face thereof the word "cancelled."

SEC. 10. In case of the death, sickness, absence from the territory, removal from office, or impeachment of any auditor or treasurer, the governor may make an appointment for the time being, of some suitable person, to perform the duties of such office until a successor can be appointed according to law, or until such absence or disability shall cease.

SEC. 11. Immediately after the appointment and qualification of any auditor or treasurer, or the resumption of his duties by either officer, (if in the meantime an auditor or treasurer *pro tempore* shall have been appointed,) the legislative assembly, if in session, and if not, the secretary of the territory, shall cause a settlement to be made of the accounts of the former auditor or treasurer *pro tempore*, remaining unsettled, in the manner provided in the seventh, eighth and ninth sections of this article.

SEC. 12. If the legislative assembly shall be in session when such settlement is made, it shall cause to be made out and delivered to the person entitled thereto a certificate of such settlement, showing the balance of money, securities and effects, for which he is accountable, and what has been delivered to his successor.

SEC. 13. If the legislative assembly shall not be in session when such settlement is made, the persons appointed by the secretary to make such settlement, shall make out duplicate certificates of such settlement, showing what is required to be shown in the certificate to be made out according to the provisions of the preceding section, one of which shall be delivered to the person entitled thereto, and the other to the governor, to be laid before the legislative assembly at its next session.

SEC. 14. When the certificate mentioned in the next preceding section shall be laid before the legislative assembly, if it approve the same it shall cause the proper entries to be made in the books of the auditor and treasurer, and if it disapprove thereof, it shall cause another settlement to be made.

SEC. 15. Any person appointed by the governor of the territory, in virtue of the tenth section of this article, shall receive the same compensation allowed by law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service.

SEC. 16. The persons appointed by the secretary to make settlement with the auditor and treasurer, shall receive the same compensation as is allowed by law to members of the legislative assembly, during the time they may be engaged in such service.

SEC. 17. The auditor and treasurer shall each have power to administer all oaths and affirmations required by law, in matters touching the duties of their respective offices.

SEC. 18. The treasurer shall pay out of any funds in his hands applicable to such use, the amount stated as due in the auditor's warrants only, in the order in which they are presented for payment.

SEC. 19. The auditor shall issue his warrants on the treasurer in any sum that the party entitled to the same may desire: *Provided*, They shall not be less than five dollars, unless the sum due is less than that amount. All warrants drawn by the auditor on the treasury of the territory, shall be in the following form:

Colorado Territory, ———. No. ———. Treasurer of the territory of Colorado pay to ——— or order ——— dollars, out of any money in the treasury not otherwise appropriated, for (here state in brief the account on which such warrant is issued,) and charge the same to ———, and this shall be your voucher.
Issued——— 18———. Signed ——— Auditor of Colorado Territory.

SEC. 20. The warrants drawn by the auditor of this territory, on the treasurer, shall be received by the sheriff or collector of the revenue, and all other officers, at their par value, in payment of taxes, fines and penalties, or other dues to the territory, and shall be received from such officer by the treasurer in settlement of revenue due from such sheriff or collector of the territory.

SEC. 21. No sheriff or collector of the revenue shall buy, purchase, trade for, or in any manner deal in the warrants drawn by the auditor, except at their par value, and every offence committed against the provisions of this section shall be punished by a fine not exceeding five hundred dollars.

SEC. 22. Every warrant shall be cancelled or paid in its own financial year, out of the sums in the hands of the treasurer, and no warrant shall be issued over and above the estimate of said auditor, duly reported to the legislative assembly.

SEC. 23. All territorial warrants issued by the proper authorities of the territory, shall draw interest from and after the date of their presentation, at the rate of ten per cent. per annum, until there are funds to pay said warrants in the hands of the treasurer.

SEC. 24. The fiscal year shall be deemed to commence on the first day of January in each year.

SEC. 25. Hereafter the term of territorial auditor of public accounts, and territorial treasurer, shall commence on the first Monday of February, biennially.

SEC. 26. The auditor shall receive a salary of eight hundred dollars per annum, and the treasurer a salary of six hundred dollars per annum, which shall be paid quarterly out of the territorial treasury.[2]

SEC. 27. For default in making and rendering the reports hereinbefore required, every auditor and treasurer shall forfeit the sum of one hundred dollars, and the like sum for every day during which he shall be in default in making such report after the organization of the legislative assembly.

An Act concerning Reports of Territorial Officers.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 28. (I.) That all territorial officers heretofore required by law to report the condition of their respective departments to the legislative assembly annually, shall hereafter make such reports between the tenth and thirty-first days of January of each year intervening between the sessions of the legislature, to the governor of the territory.

SEC. 29. (II.) The secretary of the territory shall, between the first and tenth days of January of each year intervening as aforesaid, select and appoint three suitable persons, residents of the territory, one of whom shall be a justice of the supreme court, who shall examine all the accounts and official proceedings of the territorial auditor and treasurer since the date of their last general settlement with the territory, and report, within twenty

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(2) See An act to provide for the salary of the Territorial Auditor and the contingent expenses of his office. Approved Jan. 10, 1868, in the chapter concerning Fees and Salaries.

days after their appointment, the result of their investigations to the governor.

SEC. 30. (III.) The persons thus selected and appointed shall, before proceeding to the discharge of the duties herein assigned them, take and subscribe an oath that they will support the constitution of the United States and the organic act of the territory; that they will carefully, diligently and impartially inquire into and examine the accounts, books, papers, vouchers and all of the official transactions of the territorial auditor and treasurer that may properly come before them; that they will not connive at or allow any claim against the territory based upon fictitious or unnecessary services, or at greater increased rates than the territorial credit may, at the time of rendering such service, have required, and that they will promptly and faithfully report to the governor each and every claim and account disallowed by them, in whole or in part, together with the reasons for such disallowance; which said oath shall be indorsed upon the notices of appointment issued them by the secretary.

SEC. 31. (IV.) If from the report above provided for, it shall conclusively appear that either the auditor or treasurer, or both, have neglected or improperly performed the duties of their respective offices, so that material injury has resulted to the territory from the incompetency, inability or unfitness of either or both of said officers, it shall and is hereby declared to be the duty of the governor to immediately remove from office the officer or officers thus found delinquent, and supply the vacancies thus occasioned, by new appointments.

SEC. 32. (V.) Immediately upon the receipt of the reports herein provided for, the governor shall cause the same, or correct abstracts thereof, to be published one week in one or more newspapers, not exceeding three, having the largest general circulation in the territory.

SEC. 33. (VI.) The persons appointed pursuant to the provisions of this act, shall receive for the performance of their services herein specified, eight dollars per day for the time they shall be engaged in such service, the same to be paid out of the territorial treasury.

SEC. 34. (VII.) All acts and parts of acts inconsistent with this act, are hereby repealed.

Prior Statutes Repealed. An act to organize and establish the Treasury Department. Approved November 6, 1861. Laws 1861, p. 135.

An act to provide for the expenses of Colorado Territory. Approved October 31, 1861. Laws 1861, p. 52.

An act to amend an act entitled An act to organize the Treasury Department. Approved March 11, 1864. Laws 1864, p. 137.

A Concurrent Resolution to define the term of Territorial Auditor and Territorial Treasurer. Approved January 23, 1866. Laws 1866, p. 77.

CHAPTER X.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

SECTION
1. Drawers and indorsers of foreign bill of exchange; liability of.
2. Drawer and indorser of bill of exchange payable out of this territory but within the United States; liability of.
3. All promissory notes, bonds, due-bills, etc., for the payment of money, etc., taken to be due to the person named therein.
4. All such notes, bonds and bills, shall be negotiable.
5. Assignee may maintain an action thereon in his own name.
6. Maker not allowed to allege payment to payee after notice of the assignment.
7. Liability of assignor to assignee.
8. Upon notes assigned after maturity, the maker allowed the same defences against assignee as against the payee.
9. In case of assignment before maturity, the maker may show in defence payments made to payee before assignment, of which assignee had notice before receiving the note.
10. Want or failure of consideration, when to be shown in defence to action on note; *proviso*.
11. Fraud in obtaining the execution of note renders it void, except against assignee before maturity.
12. In case of a note payable in chattels, where such chattels may be delivered.
13. Effect of a tender of such property; *proviso* as to perishable property.
14. Days of grace allowed on all bills of exchange and promissory notes; not to apply to checks or drafts payable at sight.
15. Bills of exchange falling due on Sunday, etc., deemed to be due on the day previous.

SECTION 1. When any foreign bill of exchange, which may be drawn for any sum of money expressing that the value has been received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest thereon from the time such bill ought to have been paid until paid, and ten per cent. damages in addition, together with the costs and charges of protest.

SEC. 2. If any bill of exchange, drawn upon any person, or body politic or corporate, out of this territory but within the United States or her territories, for the payment of money, and expressed to be for value received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest thereon from the time such bill ought to have been paid, and ten per cent. damages in addition, together with all costs and charges of protest.[1]

SEC. 3. All promissory notes, bonds, due-bills and other instruments in writing made by any person, whereby such person promises or agrees to pay any sum of money or article of personal property, or any sum of money in personal property, or acknowledges any sum of money or article of personal property to be due to any other person or persons, shall be taken to be due and payable to the person or persons to whom the said note, bond, bill or other instrument in writing is made.

SEC. 4. Any such note, bill, bond, or other instrument in

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(1) Only the first and second sections of this chapter have reference to bills of exchange. *Peoria & Oquawka R. R. Co.* v. *Neill*, 16 Ill. 269.

writing, made payable to any person or persons shall be assignable by indorsement thereon, under the hand of such person and of his assignee, in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof in each and every assignee successively.[2]

SEC. 5. Any assignee to whom such sum of money or personal property is by such indorsement made payable, or in case of the death of such assignee, his executors or administrators may, in his own name, institute and maintain the same kind of action for the recovery thereof, against the person who made and executed any such note, bond, bill or other instrument of writing, or against his heirs, executors or administrators, as might have been maintained against him by the obligee or payee in case the same had not been assigned, and in every such action, in which judgment shall be given for the plaintiff or plaintiffs, he shall recover his damages and costs of suit as in other cases.

SEC. 6. No maker of any such note, bond, bill or other instrument in writing, or other person liable thereon, shall be allowed to allege payment to the payee, made after notice of such assignment, as a defence against such assignee or assignees.

SEC. 7. Every assignor or his heirs, executors or administrators of every such note, bond, bill, or other instrument in writing, shall be liable to the action of the assignee thereof, or his executors or administrators if such assignee shall have used due diligence by the institution and prosecution of a suit against the maker of such assigned note, bond, bill, or other instrument of writing, or against his heirs, executors or administrators, for the recovery of the money or property due thereon, or damages in lieu thereof:[3] *Provided*, That if the institution of such suit

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(2) A written acknowledgment of indebtedness in the simplest form is all that the statute requires to give the character of negotiability. *Stewart* v. *Smith*, 28 Ill. 406. And see *Bilderback* v. *Burlingham*, 37 Ill. 342. *Hunt* v. *Divine*, 37 Ill. 138, 19 Ill. 390, 20 Ill. 144.

But the money or property must be payable absolutely. *Kelly* v. *Hemmenway*, 13 Ill. 604; and to a payee named therein. *Walters* v. *Short*, 5 Gilm. 259.

And all such instruments are negotiable, whether so expressed or not. *Archer* v. *Claflin*, 31 Ill. 306.

A note payable to the order of the maker is negotiable. *Wilder* v. *DeWolf*, 24 Ill. 191.

(3) The indorser is liable only when the indorsee has exercised due diligence by action at law to enforce payment from the maker.

To constitute diligence, the action must be commenced to the first term succeeding the maturity of the note. *Lusk* v. *Cook*, Breese 53.

The absence of the maker from the county will not excuse a delay in bringing the action. *Tarlton* v. *Miller*, Breese 39.

And the action must be prosecuted to judgment without delay on the part of the assignee. *Curtis* v. *Gorman*, 19 Ill. 141.

And execution must be issued upon the judgment without delay. *Bestor* v. *Walker*, 4 Gilm. 14.

Addressed to the sheriff of the county wherein the judgment is obtained. *Chalmers* v. *Moore*, 22 Ill. 362; and the indorsee must make diligent search for property of the maker, out of which to satisfy his execution. *Nixon* v *Wyrich*, 20 Ill. 600.

If, in a case within the jurisdiction of a justice, the action be commenced in the District Court, and by reason of the accumulation of business in that court, or for other cause, the plaintiff is de-would have been unavailing, or if the maker had absconded, or left the territory[4] when such assigned note, bond, bill, or other instrument in writing became due, such assignee or his executors or administrators may recover against the assignor, or against his executors or administrators, as if due diligence by suit had been used.

SEC. 8. If any such note, bond, bill, or other instrument in writing, shall be indorsed after the day on which the money or property therein mentioned becomes due and payable, and the indorser shall institute an action thereon against the maker of the same, the defendant being maker shall be allowed to set up the same defence that he might have done had the said action been instituted in the name and for the use of the person to whom the said note, bond, bail, or other instrument of writing was originally made due and payable.[5]

SEC. 9. If any such note, bond, bill, or other instrument of writing shall be indorsed before the day the money or property therein mentioned becomes due and payable, and the indorser shall institute an action thereon, the defendant may give in evidence at the trial any money or property actually paid on said note, bond, bill, or other instrument in writing, before the same was indorsed or assigned to the plaintiff, on proving that the plaintiff had sufficient notice of the said payment before he accepted or received such indorsement.

SEC. 10. In any action commenced, or which may hereafter be commenced in any court of law of this territory, upon any

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layed in procuring judgment, and pending his action the maker becomes insolvent, the indorsee is discharged. *Alison* v. *Smith*, 20 Ill. 106.

And if judgment be procured in a justice's court, a transcript thereof must be filed in the District Court, and execution issued thereon. *Sanders* v. *O'Briant*, 2. Scam. 370.

And if the maker have property in possession not exempt from execution, execution must be levied thereon, although it is claimed by a third person.

The claim of such third person must be contested, or the indorsee in an action against the indorsor must establish its validity. *Roberts* v. *Haskell*, 20 Ill. 59.

If the property be under chattel mortgage, it must, if its value exceed the mortgage debt, be levied upon and offered for sale. *Ibid.*

If, by the exercise of proper diligence a part of the debt might have been recovered against the maker, as to so much the indorser is discharged. *White* v. *Clayes*, 32 Ill. 325.

But the indorsee need not go into chancery to remove obstacles in the way of his execution. *Bledsoe* v. *Graves*, 4 Scam. 386.

Nor is he bound to go beyond the county where the maker resides to seek for property; though if within his knowledge the maker has property in another county, he must resort to it. 4 Gilm. 14.

Every indorser is liable to every subsequent indorsee. *Clifford* v. *Keating*, 3 Scam. 258.

[4] The fact that the maker resides out of the territory, and that this is known to indorsee at the time of the indorsement, does not relieve the indorser of his liability. *Schuttler* v. *Piatt*, 12 Ill. 418.

But where the maker resided out of the State, and had never been within it, and the assignment was made after maturity, held that the case was not within this provision. *Crouch* v. *Hall*, 15 Ill. 263.

If it be attempted to show that an action against the maker would have been unavailing, the proof must be directed to the whole period from the maturity of the note to the institution of the action against the indorser. *White* v. *Clayes*, 32 Ill. 325.

[5] But the maker cannot in an action by an indorsee set up a claim or set-off against a prior holder, not the payee, even when the note was indorsed after maturity. *Favorite* v. *Lord & Smith*, 35 Ill. 148.

note, bond, bill, or other instrument in writing,[6] for the payment of money or property, or the performance of covenants or conditions by the obligee or payee thereof, if such note, bond, bill, or instrument in writing was made or entered into without a good or valuable consideration, or if the consideration upon which such note, bond, bill, or instrument was made or entered into has wholly or in part failed, it shall be lawful for the defendant against whom such action shall have been commenced by such obligee or payee to plead such want of consideration or that the consideration has wholly or in part failed, and if it shall appear that any such note, bond, bill, or instrument of writing, was made or entered into without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant, and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the equity of the case: *Provided*, That nothing in this section contained shall be construed to affect or impair the right of any *bona fide* assignee of an instrument made assignable by this chapter, when such assignment was made before such instrument became due.[7]

SEC. 11. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded, in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee of such instrument, unless such instrument was negotiated before due.[8]

SEC. 12. In all cases where any of the before-mentioned instruments of writing are for the payment or delivery of personal property other than money, and no particular place be specified in such instrument of writing for the payment thereof, it shall be lawful for the maker of any such instrument of writing to tender or cause to be tendered, on the day mentioned in any such instrument, the personal property therein mentioned, at the place where the obligee or payee of any such instrument resided at the time of the execution thereof: *Provided however*, If such personal property be too ponderous to be easily moved, or if the obligee or payee of such instrument have not, at the time of the execution of such instrument of writing, a known place of residence in the county where the maker resides, then

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(6) A *scire facias* to foreclose a mortgage is not within this section. *Hall* v. *Byrne*, 1 Scam. 140. Nor is an action of covenant upon a lease of lands. *Dunbar* v. *Bonesteele*, 3 Scam. 34.

(7) This proviso does not extend to protect the rights of an equitable assignee; only the indorsee of the legal title is within it. *Sullivan* v. *Dollins*, 13 Ill. 85.

(8) Fraud in the contract upon which the note is based, (as if the payee fraudulently misrepresent the quality or value of goods for which it is given) is not within the provisions of this section. *Wood* v. *Hynes*, 1 Scam. 105.

Nor is the note void for the fraud of a third party not participated in by the payee. *Easter* v. *Minard*, 26 Ill. 495.

it shall be lawful to tender such personal property at the place where the maker of such instrument resided at the time of the execution thereof. Any tender made in pursuance of this section, shall be equally valid and legal in case any such instrument of writing shall have been assigned in pursuance of the fourth section of this chapter, as if no such assignment had been made.[9]

SEC. 13. A legal tender of any such personal property shall discharge the maker of any such instrument from all liability thereon, and the property thus tendered is hereby declared to be vested in and belong to the legal holder and owner of any such instrument of writing, and he may maintain an action for the recovery thereof or for damages, if the possession be subsequently illegally withheld from him: *Provided however*, If any such property so tendered shall be of a perishable nature, or shall require feeding or other sustentation, and the person owning and holding such instrument of writing be absent at the time of tendering the same, it shall be lawful for every person making such tender, to preserve, feed and otherwise take care of the same, and he shall have a lien on such tendered property for his reasonable trouble and the expenses of feeding or sustaining such property, until payment be made for such trouble and expense.

SEC. 14. Three days of grace shall be deemed and taken to apply to all bills of exchange and promissory notes maturing within this territory, so that they shall not be deemed to fall due until the third day from and after the day of maturity expressed therein; but this provision shall not extend to drafts payable at sight, nor to checks for funds deposited in bank or elsewhere, subject to draft at sight.

SEC. 15. Bills of exchange and promissory notes maturing on Sunday, the fourth day of July, Christmas, or any day set apart by the president of the United States or the governor as a day of public fasting or thanksgiving, shall be deemed to fall due the previous day, and may be presented and protested accordingly.

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(9) This, and the following section, have no application to verbal contracts for the delivery of personalty. *Woods* v. *Dial*, 12 Ill. 73.

Nor to a note payable in money, with the privilege to the maker to discharge it by a delivery of property. *Borah* v. *Curry*, 12 Ill. 68.

Prior Statutes Repealed. An act concerning Bills of Exchange and Promissory Notes. Approved Oct. 31, 1861. Laws 1861, p. 49.

An act relating to Negotiable Instruments, Promissory Notes and Contracts. Approved Feb. 8, 1865. Laws 1865, p. 87.

CHAPTER XI.

BUTCHERS.

SECTION
1. Every butcher to give bond, conditioned to keep a record of all cattle purchased or slaughtered by him, with a description thereof, date of purchase and from whom purchased, and to preserve hide and horns of animal for thirty days.
2. Penalty for violation of first section.
3. Penalty for failure to observe conditions of bond.

SECTION
4. Record provided for by first section, and the hide and horns of animals slaughtered, to be open to inspection of all persons; penalty for refusal to permit such inspection.
5. Disposition of fines collected under this act; sureties in bond liable for all fines.
6. Appeals allowed.
7. This act in force within twenty days from its passage.

An act to require Butchers and Slaughterers to give bonds, and to keep a Record of the animals purchased and slaughtered by them.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of the Territory of Colorado:

SECTION 1. Every person, before he shall set up and carry on the trade or business of a butcher or slaughterer of horned cattle in this territory, shall file a bond, approved by the county commissioners, with the clerk of the county in which he desires to carry on the business, in a sum not less than one thousand dollars nor more than five thousand dollars, running to the people of the territory of Colorado, conditioned that he shall keep a true and faithful record, in a book kept for the purpose, of all cattle purchased or slaughtered by him, with a description of the animal, including marks, brands, age, weight, and from whom purchased, and the date thereof, and to keep the hide and horns of such animal free to the inspection of all persons for the period of thirty days after it is slaughtered.

SEC. 2. Every person who shall be found carrying on the business of butcher or slaughterer in this territory, without having filed the bond provided in the first section of this act, shall be deemed guilty of a misdemeanor, and be fined in a sum not less than fifty nor more than one hundred dollars for every day he shall carry on such business, to be recovered before any justice of the peace of the proper county, or by indictment in the district court.

SEC. 3. Every person who shall carry on the business of butcher or slaughterer of horned cattle, and shall fail to keep a true and faithful record in a book kept for the purpose, of all cattle purchased or slaughtered by him, together with a description of each animal, including marks, brands, age, weight, and from whom purchased, and the date thereof, or fail to keep the hide and horns of such animal or animals for thirty days after such animal is slaughtered, shall be deemed guilty of a misdemeanor, and for each offence fined in a sum not less than ten nor more than one hundred dollars, to be recovered as provided in the second section of this act.

SEC. 4. The record provided for in this act shall be open to the inspection of all persons, and also, the hide and horns, for the period of thirty days, and any butcher or slaughterer refusing to permit such inspection or examination, shall be subject to a fine of not less than ten nor more than twenty-five dollars for each offence, to be recovered as provided in section two of this act.

SEC. 5. All fines and penalties so recovered under this act shall be paid into the county treasury of the proper county, and the offender and his sureties shall be liable on the bond provided for in the first section of this act, for all fines, penalties and costs adjudged against him under the provisions of this act. Said bond may be sued on in the name of the people in any court of competent jurisdiction.

SEC. 6. Appeals shall be allowed in cases arising under this act, as in other cases.

SEC. 7. This act shall take effect and be in force twenty days after its passage.

CHAPTER XII.

CAPITOL.

SECTION
1. Seat of government located at Denver, in county of Arapahoe.
2. Governor to appoint three commissioners to select within said city a site for the capitol.
3. Commissioners to make their selection within sixty days after their appointment; site selected to contain not less than ten acres of ground; selection to take effect upon conveyance of the premises selected to the territory without charge.
4. Prior and conflicting laws repealed.
5. Upon approval of this act, the legislative assembly to stand adjourned to Denver.

An act to locate the Seat of Government of the Territory of Colorado.

[*Approved December* 9, 1867.]

Be it enacted by the Council and House of Representatives of the Territory of Colorado:

SECTION 1. That the seat of government of the territory of Colorado, shall be and the same is hereby located and established at Denver, in the county of Arapahoe, in said Territory.

SEC. 2. That the governor of the territory of Colorado, by and with the advice and consent of the legislative council of said territory, shall, at the present session of the legislative assembly, appoint three persons commissioners on behalf of the territory, to select a site, within the said city of Denver, for the capitol of said territory.

SEC. 3. The persons appointed, as aforesaid in section second of this act, shall, within sixty days after the date of their appointment, proceed to select a site for the capitol of said territory, within the said city of Denver, which site shall contain not less than ten acres of land, and if the site so selected shall be conveyed to the territory of Colorado, by the person or persons holding the title thereto, without charge to said territory and so as to vest the title to the same, absolutely and in fee-simple, in said territory, the site, so selected, shall be and remain, the property of said territory, for the purpose of erecting a capitol, and other public buildings thereon.

SEC. 4. All acts, and parts of acts, inconsistent with this act, are hereby repealed.

SEC. 5. When this act shall be approved by the governor, and notice of such approval shall be received by the branch of this legislative assembly, in which this act hath originated, this legislative assembly shall stand adjourned to meet in the said city of Denver, in the county of Arapahoe, at two o'clock in the afternoon of the day next succeeding the day of such approval.

Prior Statutes Repealed. An act to locate the seat of government of Colorado Territory. Approved Nov. 5, 1861. Laws 1861, p. 63.

An act to repeal an act entitled, An Act to locate the seat of government of Colorado Territory, and to locate the same. Approved Aug. 14, 1862. Laws 1862, p. 99.

CHAPTER XIII.

CHANCERY.

SECTION
1. District courts to have jurisdiction as courts of chancery.
2. Suit to be commenced by bill; where the bill shall be filed.
3. Set-off allowed, when.
4. Infants may sue by guardian, or next friend.
5. Clerk to issue summons to county where defendant resides; where defendants reside in different counties, summons issued to each county.
6. Summons how tested; when redeemable.
7. Service of summons; how made.
8. Publication of notice to non-residents, or defendants not found.
9. If affidavit not filed thirty days before return-day of writ, and no service had, cause continued.
10. Proceedings when cause continued.

SECTION
11. If process returned not served, on return-day, clerk may issue an *alias* or *pluries*.
12. Delivery of copy of bill, or petition, and notice of the suit, to a non-resident defendant equivalent to service of process; delivery how proved.
13. Bill taken for confessed; decree, how enforced.
14. Lien of decree.
15. Decree entered against defendant, not served or notified, may be opened and defendant allowed to answer within one year after notice thereof in writing; or within three years after decree, if no such notice given.
16. When defendant is in contempt for refusing to appear, the court may appoint a solicitor to enter his appearance; proceedings in such case.

SECTION

17. Judge may adopt rules of practice.
18. Defendant to file answer when; court may extend time; may enter interlocutory decree; defendant may answer at the succeeding term, by leave of court, etc.; terms.
19. Bill taken for confessed proceedings, and decree thereon.
20. Answer verified by oath; by whom oath administered.
21. Complainant may waive oath of defendant; in what cases; effect of answer in such case.
22. When answer adjudged insufficient; proceedings.
23. Defendant to answer bill fully.
24. On filing answer, defendant may exhibit cross-bill.
25. Complainant to answer etc. to cross-bill; effect of answer as evidence.
26. Complainant failing to answer such interrogatories, his bill may be dismissed, or cross-bill taken for confessed.
27. Defendant may bring a new party before court; how.
28. Complainant not to dismiss bill after cross-bill filed, without consent of defendant.
29. Complainant not compelled to answer cross-bill, till defendant has sufficiently answered original bill.
30. Exceptions to answers; costs thereon.
31. Replications to be general; to be filed in four days after answer, if in term; if answer filed in vacation, complainant to have notice.
32. After replication cause at issue; in default of replication may be set for hearing on bill and answer; answer taken as true in such case.
33. Answer of defendant may be contradicted, if replication filed.
34. Court may extend time of answering, etc.; may permit amendments on terms, so that neither party surprised or delayed.
35. Court may direct an issue at law; mode of trial.
36. On return of execution at law unsatisfied, plaintiff may file bill for discovery against defendant and others, to compel delivery of any property held in trust for defendant (except where trust created by a third person) and payment of money due him.
37. Court may compel discovery, and restrain transfer payment, etc.; may direct satisfaction of judgment out of property discovered; no answer to such bill to be read as evidence on trial of indictment for the fraud.
38. Death of one party, the cause of action surviving, not to abate suit.
39. Death of one of several parties not to abate suit; persons acquiring an interest by such death, to be made parties; otherwise not prejudiced.
40. Death of all parties not to abate suit; how revived.
41. Unknown persons; how made parties; process, and notice, in such cases.
42. Effect of decree as to unknown persons.
43. Decree for conveyance may be executed by a commissioner; effect of; deed to be recorded within six months.
44. On decree for sale, courts may fix the terms thereof.
45. Decree to be a lien on real estate; court may make special order thereto.
46. Decrees may be enforced by execution; liability of sheriff thereon; or party disobeying decree may be attached, fined and imprisoned; or court may order sequestration.
47. Court to appoint guardian *ad litem* for infants and insane persons; to appear without service of process; compensation.
48. District court to appoint a master in chancery in each county; may appoint two; term of office.
49. Master in chancery to give bond, and take an oath.
50. General powers and duties of master in chancery.
51. Special master in chancery may be appointed.
52. Fees of masters in chancery to be taxed as costs.
53. Vacancy in office of master to be filled without delay.
54. Upon removal or resignation of any master in chancery, leaving unfinished business, his successor may complete same.
55. Master in chancery may grant writ of *certiorari*.

SECTION 1. The several district courts of this territory, in all causes of which they may have jurisdiction as courts of chancery, shall have power to proceed therein, according to the mode hereinafter prescribed; and where no provision is made by this chapter, according to the general usage and practice of courts of equity or agreeably to such rules as may be established by the said courts in that behalf.

SEC. 2. The mode of commencing suits in equity shall be, by filing a bill, setting forth the nature of the complaint, with the clerk of the district court in the county within whose jurisdiction the defendants, or the major part of them,[1] if inhabitants of this territory reside;[2] or if the suit may affect real estate, in the county where the same, or a greater part thereof, shall be situated;[3] if the defendants are all non-residents, then

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(1) If the defendants reside in different counties, and the major part of them do not reside in any one county, the bill will lie in the county where any of them reside. *Lester* v. *Stevens*, 29 Ill. 160.

(2) The court of chancery does not acquire jurisdiction by the service of process upon a defendant in the county in which he is *found*, not being the county of his residence. *Aken* v. *Lloyd*, 28 Ill. 331.

(3) The decree of the court, granting partition, or admeasuring dower, or enforcing a lien, af-

with the clerk of the district court, in any county. Bills for injunctions to stay proceedings at law, shall be filed in the office of the district court, in the county in which the record of the proceedings had shall be.

SEC. 3. In suits for the payment or recovery of money, set-offs shall be allowed, in the same manner and with like effect as in actions at law.

SEC. 4. Suits in chancery may be commenced and prosecuted by infants, either by guardians or next friend.

SEC. 5. Upon the filing of every bill as aforesaid, the clerk of the court aforesaid, shall thereupon issue a summons, directed to the sheriff of the county in which the defendant resides, if the defendant be a resident of this territory, requiring him to appear and answer the bill on the return-day of the summons; and where there are several defendants, residing in different counties, a separate summons shall be issued to each county, including all the defendants residing therein.

SEC. 6. Every summons shall be tested in the name of the clerk of the court out of which it may issue, shall bear the seal of the court and the signature of its clerk, shall be dated of the day it issues, and be made returnable to the next term of the court after the date thereof.

SEC. 7. Service of summons shall be made, by reading the same to the defendant, or leaving a copy at his usual place of abode,[4] with some white person of the family, of the age of ten years or upwards, and informing such person of the contents thereof; which service shall be at least ten days before the return-day of the summons.

SEC. 8. Whenever any complainant shall file, in the office of the clerk of the court in which his suit is pending, an affidavit, showing that any defendant resides or hath gone out of this territory, or on due inquiry, cannot be found, or is concealed within this territory, so that process cannot be served upon him, the clerk shall cause publication to be made in some newspaper

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fects real estate within the meaning of this provision; a bill to compel a conveyance is not of this character. *Enos* v. *Hunter*, 4 Gilm. 217.

Nor is a bill to foreclose a mortgage. *Broom* v. *Peers*, 6 Conn. 198. *Breckenridge* v. *Ormesby*. 1. *J. J. Marsh*, 256.

The district court of one county has not jurisdiction to set aside a conveyance of lands situate in another county, wherein the defendant resides, in aid of an execution issued out of the district court of the former county. *Richards* v. *Hyde*, 21 Ill. 640.

It seems that this provision has no application to a case where the real estate to be affected is situate in different counties, and the greater part is not situate in any one county. In such case the bill will lie in any county where any of the lands are situate. *Ralston* v. *Hughes*, 13 Ill. 474.

(4) A return of service by leaving a copy with the wife of the defendant at her usual place of abode, etc., is sufficient. *Prieto* v. *Duncan*, 22 Ill. 27.

A return of service "by leaving a copy with A. B., a white person over the age, etc., at the usual place of abode of the defendant," is defective in not showing that the person was of the family of the defendant. *Townsend* v. *Griggs*, 2 Scam. 365.

The name of the person with whom such copy is left, must be expressed in the return. *Montgomery* v. *Brown*, 2 Gilm. 584.

published in his county, and if there be no newspaper published in his county, then in a newspaper published in this territory, containing notice of the pendency of such suit, the names of the parties thereto, the title of the court, and the time and place of the return of the summons in the case; such publication to be made for four successive weeks; the first of which shall be at least thirty days before the return-day of such summons.[5] But this proceeding shall not dispense with the usual exertion, on the part of the sheriff, to serve the summons.[6]

SEC. 9. If thirty days shall not intervene, between filing such affidavit and the return-day of the summons, and the summons shall not be served, the cause shall be continued to the next term; if thirty days shall intervene as aforesaid, or if service of process shall be made, and the defendant shall not appear on the return-day of the summons, the bill may be taken for confessed.

SEC. 10. If, for want of due publication or service, the cause shall be continued, the same proceedings shall be had at the succeeding term of the court, as may have been had at the term to which said summons shall be returnable.

SEC. 11. If, in any suit in chancery, the process shall not be returned, executed, on the return-day thereof, the clerk, if required, shall issue an *alias*, *pluries*, or other process, without an order of the court therefor.

SEC. 12. The complainant may cause a copy of the bill or petition, together with a notice of the commencement of the suit to be delivered to any defendant residing or being without this territory, not less than thirty days previous to the commencement of the term at which such defendant is required to appear; which service, when proved to the satisfaction of the court, by the oath or deposition of any person competent to be a witness in the cause, shall be as effectual, as if such service had been made in the usual form, within the limits of this territory.

SEC. 13. When any bill is taken for confessed, the court may make such decree thereon as may be just, and may enforce such decree, either by sequestration of real and personal estate, by attachment against the person, by causing possession of real and personal estate to be delivered to the party entitled thereto, or by ordering the demand of the complainant to be paid out

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(5) The publication of notice without the filing of affidavit is irregular, but, if the decree recite that affidavit had been filed, it will be sufficient, though the affidavit do not appear in the record. *Tibbs* v. *Allen*, 27 Ill. 125.

(6) The court does not acquire jurisdiction by the publication of notice, unless summons be issued and returned 'not found.' *Jacobus* v. *Smith*, 14 Ill. 359. *McDaniels* v. *Correl*, 19 Ill. 220. *Smith* v. *Trimble*, 27 Ill. 152.

An acknowledgment of service upon the writ, will not supply the absence of such return. *Chickering* v. *Failes*, 26 Ill. 518.

of the effects or estate sequestered, or which are included in such decree, and by the exercise of such other powers as pertain to courts of chancery, and which may be necessary for the attainment of justice.

SEC. 14. A decree for money shall be a lien on the lands and tenements of the party against whom it is entered, to the same extent and under the same limitations, as a judgment at law.

SEC. 15. When any final decree shall be entered against any defendant, who shall not have been summoned or notified to appear, as required by this chapter, and such person, his heirs, devisees, executor, administrator, or other legal representative, as the case may require, shall, within one year after notice in writing given him or them, of such decree, or within three years after such decree, if no such notice shall have been given as aforesaid, appear in open court and petition to be heard touching the matter of such decree, and shall pay such costs as the court shall deem reasonable in that behalf; the person so petitioning, may appear and answer the complainant's bill,[7] and thereupon such proceedings shall be had, as if the defendants had appeared in due season, and no decree had been made. The decree shall, after three years from the making thereof, if not set aside in the manner aforesaid, be deemed and adjudged confirmed against such non-resident defendant, and all persons claiming under him, by virtue of any act done subsequent to the commencement of such suit: and at the end of the said three years, the court may make such further order in the premises, as shall be required, and shall be just.

SEC. 16. If the defendant shall be brought into court by virtue of any process, being in contempt for refusing to appear, and shall continue to refuse or neglect to enter his appearance, or appoint a solicitor of the court to do it for him, according to the provisions of this chapter or the rules of said court, then, and in that case, the court may appoint a solicitor to enter an appearance of such defendant, and such further proceedings may be had in the said cause, as if the party had actually appeared.

SEC. 17. The judges of the district courts, in their respective districts, may establish rules of proceeding in chancery, and make all needful orders and regulations, consistent with the practice of the courts of chancery in cases not provided for by law.[8]

SEC. 18. Every defendant who shall be summoned, according

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(7) The court is not required to vacate the decree, but only to permit the defendant to file his answer; the decree standing, pending the trial of the issue thereupon. *Baker* v. *Admr. of Backus*, 32 Ill. 95.

(8) Rules of court cannot rest in parole, but must be entered of record. *Owens* v. *Ransted*, 22 Ill. 161.

to the provisions of this chapter, shall file his exceptions, plea, demurrer or answer to the bill, at the time to which the process of summons shall be returnable. If he fail to do so, the bill may be taken for confessed, but for good cause shown, the court may extend the time for excepting or pleading, and the court may thereupon enter an interlocutory decree, which may be absolute at the next term, and carried into effect as other final decrees. If the defendant shall appear at the next term and offer to file his answer to the bill, the court may permit him to do so, upon his showing sufficient cause and paying the costs of the preceding terms; in such case the decree shall be vacated, and the cause may be proceeded in as in other cases.

SEC. 19. Where a bill is taken for confessed, the court, before a final decree is made, if deemed requisite, may order the complainant to produce documents and witnesses to prove the allegations of his bill, or may examine him on oath or affirmation touching the facts therein alleged;[9] such decree shall be made in either case as the court shall consider equitable and proper.

SEC. 20. Every answer shall be verified by one oath or affirmation taken before and certified by a judge or justice of the peace or notary public in this territory, or the clerk of the court in which the action is pending, or before a judge or justice of the peace, or other person authorized to administer an oath in the state, territory, kingdom or empire, in which the defendant may be, or reside, the official character of such officer, if out of this territory, being attested by the seal of some court of record within such state, territory, kingdom or empire.

SEC. 21. When a bill shall be filed in the court of chancery, other than for discovery only, the complainant may waive the necessity of the answer being made on the oath of the defendant; and in such cases the answer may be made without oath, and shall have no other or greater force, as evidence, than the bill.

SEC. 22. When an answer shall be adjudged insufficient, the defendant shall file a further answer[10] within such time as the court shall direct, and, on failure thereof, the bill shall be taken as confessed; if such further answer shall likewise be adjudged insufficient, the defendant shall file a supplemental answer and pay all costs attendant thereon; if that shall be adjudged insufficient, the defendant may be proceeded against for contempt,

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(9) Upon bill taken for confessed, the court may hear evidence, or not, in its discretion; and the defendant can not assign for error the insufficiency of the proofs. *Stevens* v. *Bechnell*, 27 Ill. 444.

But a decree *pro confesso* concludes the defendant only to the extent of the allegations in the bill. *Gault* v. *Hoagland*, 25 Ill. 266.

(10) The further answer required is a formal answer, specially directed to the matters excepted to; the original answer must not be changed, or altered, by erasure, or interlineation, or in any other manner. *Supervisors of Fulton Co.* v. *Mississippi & Wabash R. R. Co.*, 21 Ill. 338.

and the like proceedings be had thereon, to enforce the order of the court, as in other cases of contempt.

SEC. 23. Every defendant shall answer fully all the allegations and interrogations of the complainant, except such as are not required to be answered by reason of exceptions, plea, or demurrer thereto allowed.

SEC. 24. Any defendant may, after filing his answer, exhibit and file his cross-bill containing interrogatories to the complainant, and call upon him to file his answer thereto, in such time as may be prescribed by the rules of the court.[11]

SEC. 25. The complainant shall, in such case, be held to except, plead, demur, or answer to such cross-bill, in the same manner that the defendant is required to except, plead, demur, or answer to an original bill, and his answer shall be evidence in the same manner as the defendant's answer to the bill.

SEC. 26. If the complainant shall fail to answer such interrogatories, his bill or petition shall be dismissed with costs, or the new matter set out in the defendant's cross-bill, shall be taken as confessed, and a decree entered accordingly.

SEC. 27. Where it is necessary for the defendant to bring a new party before the court, he shall state, in his answer, and insert interrogatories for him in his answer, and a subpœna shall be issued, and other proceedings had, as in the case of other defendants.

SEC. 28. No complainant shall be allowed to dismiss his bill after a cross-bill has been filed, without the consent of the defendant.

SEC. 29. The complainant shall not be compelled to file his answer to any cross-bill until the defendant shall have filed a sufficient answer to the complainant's bill.

SEC. 30. All exceptions to answers to interrogatories exhibited by the defendant as aforesaid, shall be filed within such time as the court may direct, and be argued at such time as the court may appoint; if the complainant's exceptions be overruled, he shall pay costs to the defendant, and if the defendant's answer be adjudged insufficient, he shall pay costs to the complainant.

SEC. 31. Replications shall be general with the like advantage to all parties as if special, and shall be filed in four days after the answer, if in term time, or, if such answer be filed in vacation, the plaintiff or his attorney shall have notice thereof.

SEC. 32. After replication is filed, the cause shall be deemed at issue, and stand for hearing, or in default of filing such replication, the cause may be set for hearing on the bill, and answer; in which case the answer shall be taken as true, and

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(11) The cross-bill is a mere adjunct to the original bill, and no process is necessary thereon. *Fleece* v. *Russell*, 13 Ill. 32.

no evidence shall be received, unless it be matter of record to which the answer refers.[12]

SEC. 33. When the complainant shall require a discovery respecting the matters charged in the bill, the disclosure shall not be deemed conclusive; but, if a replication be filed, may be disproved or contradicted like any other testimony according to the practice of courts of equity.

SEC. 34. The said district courts, when sitting as courts of equity, may extend the time for answering, replying, pleading, demurring, or joining in demurrer, and may permit the parties to amend their bills, petitions, pleas, answers, and replications, on such terms as the court may deem proper, so that neither party be thereby surprised or delayed.

SEC. 35. The said district courts may, in their discretion, direct an issue or issues to be tried by a jury whenever it shall be judged necessary, in any cause in equity; the mode of trial shall be the same as has been heretofore practised in courts of equity. In every such case the order of the court may specify and set down the issue, or issues, to be tried by the jury, so as to avoid the necessity of formal pleading, as heretofore practised.[13]

SEC. 36. Whenever an execution shall have been issued against the property of a defendant, on a judgment at law, or in equity, and shall have been returned unsatisfied in whole or in part,[14] the party suing out such execution, may file a bill in chancery, against such defendant, and any other person, to compel the discovery of any property, or thing in action belonging to the defendant; and of any property, money, or thing in action due to him, or held in trust for him, and to prevent the transfer of any such property, money, or thing in action, or the payment or delivery thereof to the defendant, except when such trust has been created by, or the fund so held in trust has proceeded from some person other than the defendant himself.

SEC. 37. The courts shall have power to compel such discovery, and to prevent such transfer, payment or delivery, and to decree satisfaction of the sum remaining due upon such judgment, out of any personal property, money, or things in action, belonging to the defendant, or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery, whether the same were originally liable to be taken in execution at law or not, provided that no answer

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(12) If a cause be set for hearing upon bill and answer, the answer, however defective, and whether responsive to the bill or not, is taken as true. *Kitchell* v. *Burgwin*, 21 Ill. 40.

But this section applies only where the answer is under oath. *Chambers* v. *Rowel*, 36 Ill. 172.

(13) The court is not concluded by the verdict, but may award a new trial, or may render a decree against the verdict. *Garrett* v. *Stevenson*, 3 Gilm. 279. *Thatcher* v. *Thatcher*. 17 Ill. 66.

(14) It is not essential that the execution should remain in the hands of the officer during its lifetime. *Bowen* v. *Parkhurst*, 24 Ill. 258.

made to any bill filed under this and the preceding section, shall be read in evidence against the defendant on the trial of any indictment for the fraud charged in the bill.

Sec. 38. If, in any suit or action now pending, or which shall hereafter be brought in any court of chancery, there are, or shall be two or more complainants or defendants, and one or more of them die, if the cause of such action or suit survive to the surviving complainant or complainants, or against the surviving defendant or defendants, such action shall not thereby be abated, but such death being shown and suggested to the satisfaction of the court, such suit or action shall proceed at the suit of the surviving complainant and against the surviving defendant or defendants.

Sec. 39. When there shall be two or more complainants or defendants, in any suit or action in chancery, as aforesaid, and any of them die, and the cause of action do not survive, but other persons shall become parties in interest, in right or by the death of such deceased party, such suit or action shall, by reason of such death, be abated only with respect to such deceased party; the surviving complainant or complainants, may proceed against the surviving defendant or defendants, without reviving the suit against the representatives of the deceased party, or any other, who may become interested by the death of such party, but in such case, such representatives or other persons becoming interested by the death of such party, shall not be bound by any order or decree in such cause to which they are not made parties; and they may be made parties in the manner provided by law in similar cases.

Sec. 40. In all cases where all the complainants or defendants in any suit now pending, or hereafter to be brought in any court of chancery, shall die before final decree, such suit or action shall not thereby be abated; but may be revived in the name of the legal representatives of the deceased, or other person becoming interested in the cause of action by the death of such party.

Sec. 41. In all suits in chancery, and suits to obtain title to lands, in any of the courts of this territory, if there be persons interested in the same, whose names are unknown, it shall be lawful to make such persons parties to such suits or proceedings, by the name and description of persons unknown, or unknown heirs, or devisees of any deceased person, who may have been interested in the subject-matter of the suit previous to his or her death; but in all such cases an affidavit shall be filed by the party desiring to make any unknown person party, stating that the names of such persons are unknown, and process shall be issued against all parties by the name and description given as aforesaid, and notices given by publication, as is required by section eight of this chapter, shall be sufficient to

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authorize the court to hear and determine the suit, as though all parties had been sued by their proper names.

SEC. 42. All decrees, orders, judgments, and proceedings made or had, with respect to such unknown persons, shall have the same effect, and be as binding and conclusive upon them, as though suit or proceedings had been instituted against them by their proper names.

SEC. 43. Whenever a decree shall be made in any suit in equity, directing the execution of any deed or other writing, and the party against whom the same shall have been entered, shall not comply therewith, within the time required, it shall be lawful for the court to appoint a commissioner to execute the same; the execution thereof, by such commissioner, shall be as valid in law, to pass, release, or extinguish the right, title and interest of the party on whose behalf it is executed, as if it had been executed by such party in proper person, in conformity with such decree; and such deed or other writing, if it relate to land, shall, within six months after its execution by such commissioner, be recorded in the office of the recorder of the county wherein the land lies.

SEC. 44. In all cases where a sale of property is decreed, the court may direct the same to be made, for cash, or on such credit, and on such terms as may be deemed best and most equitable to the interests of the several parties.

SEC. 45. All decrees given in causes in equity in this territory, shall be a lien on all real estate respecting which such decree shall be made, and whenever by any decree, any party to a suit in equity shall be required to perform any act, other than the payment of money, or to refrain from performing any act, the court may, in such decree, order that the same shall be a lien upon the real or personal estate, or both, of such party until such decree shall be fully complied with; and such lien shall have the same force and effect, and be subject to the same limitations and restrictions as judgments at law.

SEC. 46. When there shall be no master in chancery, or commissioner to execute a decree, the same may be carried into effect by execution, or other final process, according to the nature of the case, directed to the sheriff or other officer of the proper county; which, when issued, shall be executed and returned by the sheriff or other officer, to whom it may be directed, and shall have the same operation and force as similar writs issued upon a judgment at law.(15) The sheriff or other officer, to whom the same is directed, shall be subject to the like penalties and recoveries for misconduct or neglect in the execution or return thereof as in cases at law; or the court may, if necessary, direct an attachment to be issued against the party disobeying such decree, and fine or imprison him, or both, in the discretion of the court, and may also direct a sequestration for disobedience of any decree.

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(15) Where, in a proceeding to enforce a mechanic's lien, it was ordered that the sheriff make sale of the premises, upon a certified copy of the decree. Held that the sale was not "under execution or other final process," in such sense as to entitle the defendant to redeem. *Armsby* v. *The People*, 20 Ill. 138.

SEC. 47. In any cause in equity, it shall be lawful for the court in which the cause is pending, to appoint a guardian *ad litem*, to an infant or insane defendant in such cause, whether such infant or insane defendant shall have been served with process or not, and to compel the person so appointed, to act. By such appointment, such person shall not be rendered liable to pay costs of suit, and he shall, moreover, be allowed a reasonable sum for his charges as such guardian, to be paid by the party at whose motion he was appointed, to be taxed in the bill of costs.

SEC. 48. The several district courts of this territory, shall have power to appoint, in each county, a master in chancery, or may, in their discretion, appoint two masters in chancery. Every master in chancery, heretofore or hereafter appointed, shall hold his office during the pleasure of the court, for which he was appointed.

SEC. 49. Every master in chancery, before entering on the duties of his appointment, shall give bond, with security, to be approved by the court, in the penalty of ten thousand dollars, conditioned for the faithful performance of the duties of his office, and take and subscribe an oath of office; which bond and oath shall be filed with the clerk of the court making the appointment.

SEC. 50. Masters in chancery, in their respective counties, shall have power to take depositions, both in law and equity; to administer oaths; to compel the attendance of witnesses; and, in the absence of the district judge presiding in such county, to order the issuing of writs of *habeas corpus*, *ne exeat* and injunctions,[16] and perform all other duties, which, according to the laws of this territory and the practice of the courts of chancery, appertain to the office.

SEC. 51. Whenever it shall happen that there shall be no master in chancery in any county, or where such master shall be of counsel to either party interested, or otherwise disqualified or unable to act, in any suit or matter, the court may appoint a special master, to perform the duties of the office, in all things concerning such suit or matter.

SEC. 52. Masters in chancery shall receive for their services such compensation as shall be allowed by law, to be taxed as other costs.

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(16) It is the imperative duty of the Clerk to issue the writ upon the order of the Master. *The People* v. *Towne*, 3 Scam. 19.

SEC. 53. Whenever a vacancy occurs in the office of master in chancery, in any county in this territory, under the provisions of this law, it shall be the duty of the judge of the district court of such county to fill such vacancy, by appointment, as soon thereafter as conveniently may be.

SEC. 54. Whenever any master in chancery shall have resigned his office, or shall have been removed therefrom, and shall have left any business pertaining to his office, unfinished, it shall be lawful for his successor or successors in office, to do any act or acts, coming within the duties of the master, which may have been left undone by his predecessor or predecessors, and which may be necessary to the final completion of such unfinished business.

SEC. 55. Masters in chancery, in their respective counties, upon application, in manner as now is provided by law, to be made to the proper judge, shall have power to grant and order the issuing of writs of *certiorari*, to remove causes from before justices of the peace and probate judges, into the district court.

Prior Statutes Repealed. An act concerning Practice in Chancery. Approved Oct. 24, 1861. Laws 1861, p. 181.

CHAPTER XIV.

CHATTEL MORTGAGES.

SECTION

1. No mortgage of chattels to affect the rights of third persons, unless possession delivered to mortgagee, or mortgage acknowledged and recorded.
2. Mortgage, before whom to be acknowledged; certificate of acknowledgment by justice of peace; docket entry; fees of justice.
3. Mortgage so certified to be recorded in office of recorder of proper county; to be valid for two years; property remaining with mortgagor, if mortgage so provide.
4. Transcript of record evidence, when.
5. Fees of recorder.
6. Penalty for selling mortgaged chattels without informing purchaser of the mortgage; before what court recoverable.
7. This act to extend to bills of sale, deeds of trust, etc.

SECTION 1. No mortgage on personal property shall be valid as against the rights and interests of any third person, or persons, unless possession of such personal property shall be delivered to and remain with the mortgagee, or the said mortgage be acknowledged and recorded as hereinafter directed.[1]

SEC. 2. Any mortagor of personal property may acknowledge

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(1) This statute is in derogation of the common law, and should be strictly construed. *Porter* v. *Dement*, 35 Ill. 480.

Fuel, office furniture and other movable property of a railroad company is personalty, and can be mortgaged only in conformity to the statute. *Hunt* v. *Bullock*, 23 Ill. 320.

Corporations, like natural persons, are within the statute. *Ibid.*

such mortgage before any justice of the peace in the justice's district in which he may reside,[2] and said justice shall certify the same in substance as follows:

This mortgage was acknowledged before me by A. B., (the mortgagor) this —— day of ——, 186—. And the said justice shall also keep on his docket a memorandum of the same, in substance as follows, viz.: A. B. to C. D., mortgage of (here describe the property,) acknowledged this —— day of ——, 186—. Inserting the name of the mortgagor in place of A. B. and the name of the mortgagee in place of C. D., and the justice may receive therefor a fee of fifty cents.

SEC. 3. Any mortgage of personal property, so certified, shall be admitted to record by the recorder of the county in which the mortgagor shall reside at the time when the same is made, acknowledged and recorded, and shall, thereupon, if *bona fide*, be good and valid from the time it is so recorded, for a space of time not exceeding two years,[3] notwithstanding the property mortgaged or conveyed by deed of trust, may be left in the possession of the mortgagor: *Provided*, That such conveyance shall provide for the property so to remain with the mortgagor.[4]

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(2) The word "may" is construed to mean "shall." *Henderson* v. *Morgan*, 26 Ill. 431.

If several joint owners of personal property acknowledge a mortgage of it before the justice in the district in which one of them resides, and within which the property is situate, it is a compliance with the statute. *Funk* v. *Staats*, 24 Ill. 644.

To be effectual as against third persons, the mortgage must be recorded both in the office of the recorder of the county, and in the docket of the proper justice. *Porter* v. *Dement*, 35 Ill. 480.

But though not recorded, it will be effectual as against a purchaser who has notice of its existence, and buys the chattels expressly subject to it. *Hawthorn* v. *Lewis*, 22 Ill. 398.

Or as against one, who knowing of its existence purchases the chattels with intent to assist the mortgagor to defraud the mortgagee. *Fuller* v. *Paige*, 26 Ill. 369.

But not as against a creditor who, with actual notice of it, levies his execution upon the mortgaged property. *Porter* v. *Dement*, 35 Ill. 480.

(3) A mortgage provided that possession should remain with the mortgagor until maturity of the indebtedness, which did not become due for three years; held that the possession of the mortgagor was not fraudulent until the expiration of two years from the date of the mortgage. *Cook* v. *Thayer*, 11 Ill. 618.

(4) Upon default in the condition of the mortgage, the mortgagee must, within a reasonable time, take possession of the chattels, or the mortgage becomes fraudulent as to third persons. *Rhines* v. *Phelps*, 3 Gilm. 464. *Cass* v. *Perkins*, 23 Ill. 383.

What is a reasonable time depends upon the circumstances of the case. If both parties reside in the same county, one day would be a reasonable time. *Reed* v. *Eames*, 19 Ill. 594. *Wooley* v. *Fry*, 30 Ill. 159.

Upon default in one of several instalments secured by chattel mortgage conditioned that possession should remain with the mortgagor, "until default in the payment of the sums of money above specified at the time or times and in the manner hereinbefore contained," held that the mortgagor was not required to take possession, but might delay until default in the last to mature of the several instalments. *Barbour* v. *White*, 37 Ill. 168.

What acts of possession are necessary to be done by the mortgagee, depends upon the nature of the property. *Funk* v. *Staats*, 24 Ill. 644. *Palmer* v. *Forbes*, 23 Ill. 301.

A provision that the mortgagee may retain possession, and use and enjoy the goods according to the usual course of the retail trade, is not sanctioned by the statute; and the possession of the mortgagor under such a condition, is fraudulent, as against third persons. *Davis* v. *Ransom*, 18 Ill. 396. *Reed* v. *Wilson*, 22 Ill. 380.

And if after sale under the mortgage, at which the mortgagee is the purchaser, the mortgagor is permitted to remain in possession, the chattels are liable to attachment for the debt of the mortgagor. *Thompson* v. *Yeck*, 21 Ill. 74.

But property not in existence at the date of the mortgage, or not then owned by the mortgagor, SEC. 4. A copy of any such mortgage made, acknowledged and recorded as aforesaid, certified by the proper recorder from the proper record, may be read in evidence in any court of this territory, without any further proof of the execution of its original, if said original be lost or out of the power of the person wishing to use it.

SEC. 5. For recording any such mortgage, the recorder recording the same shall receive twelve cents for every one hundred words, and for copies thereof, the same compensation only.

SEC. 6. Any person having conveyed any article of personal property to another by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said personal property to a third person, for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to such purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof, or if the amount claimed does not exceed three hundred dollars, before any justice of the peace.

SEC. 7. The provisions of this chapter shall be deemed to extend to all such bills of sale, deeds of trust, and other conveyances of personal property, as shall have the effect of a mortgage or lien upon such property.

the possession remaining with the mortgagor, is not subject to the lien of the mortgage, although the mortgage so expressly provide. *Hunt* v. *Bullock*, 23 Ill. 325. *Rhines* v. *Phelps*, 3 Gilm. 455.

But it is otherwise in equity. *Gregg* v. *Sandford*, 24 Ill. 21.

Or where possession is delivered to the mortgagee. *Bell* v. *Shrieve*, 14 Ill. 463.

Prior Statutes Repealed. An act concerning Chattel Mortgages. Approved August 15, 1862. Laws 1862, p. 89.

CHAPTER XV.

CHURCHES.

SECTION
1. Religious societies, how incorporated; powers of such incorporation.
2. Powers of trustees.

SECTION
3. Property of religious society exempt from taxation.

SECTION 1. Whenever three or more citizens of this territory, belonging to any religious society, shall desire that said society may enjoy the secular powers of bodies corporate, and shall subscribe and acknowledge before any officer authorized to take the acknowledgments of deeds, and cause to be recorded in the recorder's office of the county in which such society is located, a united declaration of the names of such society and the names of its trustees; the said society shall thereupon become vested with the powers and succession of bodies corporate, to acquire and hold real and personal property not exceeding fifty thousand dollars in value, for the purposes of such religious society; to convey and transfer the same for such purposes; and to sue and be sued in the declared name of such society, in all the courts of this territory.

SEC. 2. The trustees of any religious society, or any majority of them, which has complied with the foregoing section, shall have authority to exercise the powers hereby conferred upon such society according to the ordinances, discipline, and usages of such society in respect to its temporal affairs.

SEC. 3. All real and personal property held by any religious society, exclusively for its purpose, which has complied with the provisions of this chapter, shall be exempt from ordinary taxation to an amount not over ten thousand dollars.

Prior Statutes Repealed. An act to invest Religious Societies with certain powers of bodies corporate. Approved August 13, 1862. Laws 1862, p. 54.

CHAPTER XVI.

COMMON-LAW.

The common-law of England adopted, together with all acts and statutes of the British Parliament of a public nature prior to the fourth year of James I.; certain exceptions.

SECTION 1. The common-law of England, so far as the same is applicable and of a general nature, and all acts and statutes of the British parliament, made in aid of or to supply the defects of the common-law prior to the fourth year of James the First, (excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth, and ninth chapter of thirty-seventh Henry Eighth,) and which are of a general nature, and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

Prior Statutes Repealed. An act adopting the common-law of England. Approved October 11, 1861. Laws 1861, p. 35.

CHAPTER XVII.

CONVEYANCES.

SECTION

1. Any person authorized to hold real estate may convey it by deed.
2. Livery of seisin not necessary to conveyance.
3. No estate in joint tenancy, save to executors and trustees, except by express limitation.
4. A deed purporting to convey a fee-simple shall pass an after acquired estate.
5. A party claiming title to lands, may convey the same though out of possession.
6. Tenancy in tail abolished.
7. Every deed construed to convey an estate in fee-simple, unless otherwise limited.
8. Conveyance in remainder to a child to be begotten, not defeated by death of a parent before birth of child, though no estate conveyed to support the remainder.
9. Every conveyance deemed to pass the right to possession, unless a future day fixed therein.
10. What covenants run with the land.
11. When action may be maintained on a covenant of warranty.
12. Powers of attorney to be recorded.
13. Before whom deeds acknowledged; how certified.
14. Grantor to be personally known to the officer taking acknowledgments, or identified by one witness.
15. How deed not acknowledged may be proved.
16. Powers of attorney to be acknowledged.
17. Married women, conveyances by; acknowledgment thereof.
18. Deeds, etc., to be recorded; to be in force as to third persons, from date of filing for record.
19. Deeds, etc., acknowledged or proved, in accordance with this act, or the laws of territory or mining district in force at date of acknowledgment, to be evidence without proof of execution; record of such deed, etc., or a transcript therefrom to be used as evidence.
20. Record of deed, though not acknowledged, to be notice.
21. Deed executed in a foreign country may be executed and acknowledged in the language thereof; sworn translation to accompany deed.
22. Certificate of acknowledgment to be indorsed on, or attached to deed.
23. How counties and cities may convey real estate.
24. How private corporations may convey real estate.
25. Covenant, how far to bind married woman.
26. Deeds of sheriff or other officer to be acknowledged as other deeds; the successor of any sheriff to execute deeds for land sold by his predecessor.
27. The terms "land," "real estate," "deed," construed.
28. Where county divided, how records transcribed; certified copies of transcribed records to be evidence.
29. Governor to appoint commissioner of deeds.
30. Commissioner to take an oath of office and deposit same, and impression of his seal, in office with secretary of territory.

SECTION 1. Any person, association of persons, body politic or corporate, who shall be entitled to hold real estate, or any interest in real estate whatever, shall be authorized to convey the same to another or others, or body corporate or politic, by deed.

SEC. 2. Livery of seisin shall in no case be necessary for the conveyance of any lands, tenements or hereditaments.

SEC. 3. No estate in joint tenancy, in any land, tenements or hereditaments shall be held or claimed under any grant, devise or conveyance whatsoever hereafter made, other than to executors and trustees, unless the premises therein mentioned shall be thereby expressly declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees (unless otherwise expressly declared as aforesaid) shall be deemed to be tenancy in common.

SEC. 4. If any person shall sell and convey to another, by deed or conveyance, purporting to convey an estate in fee simple absolute, any tract of land or real estate lying and being in this territory, not being possessed of the legal estate or interest therein at the time of the sale and conveyance, and after such sale and conveyance, the vendor shall become possessed of, and confirmed in the legal estate to the land or real estate so sold and conveyed, it shall be taken and held to be in trust, and for the use of the grantee or vendee, and the conveyance aforesaid shall be held and taken, and shall be as valid as if the grantor or vender had the legal estate or interest at the time of said sale or conveyance.[1]

SEC. 5. Any person claiming right or title to lands, tenements or hereditaments, although he, she or they may be out of possession, and notwithstanding there may be an adverse possession thereof, may sell, convey and transfer his or her interest in and to the same in as full and complete a manner as if he or she were in the actual possession of the lands and premises intended to be conveyed.

SEC. 6. In cases where by the common-law any person may become seized in fee-tail of any lands, tenements or hereditaments, by virtue of any devise or conveyance, or by any other means whatsoever, such person, instead of being or becoming seized in fee-tail thereof, shall be deemed and adjudged to be seized of such lands, tenements and hereditaments for his or her natural life only; and the remainder shall pass in fee-simple absolute to the person or persons to whom the estate would first pass on the death of such first grantee, devisee or donee in tail, according to the course of the common-law, by virtue of such devise or conveyance.

SEC. 7. Every estate in lands which shall be granted, conveyed or devised to one, although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee-simple estate of inheritance, if a less estate be not limited by express words, or do not appear to be granted, devised or conveyed by operation of law.

SEC. 8. When an estate hath been, or shall hereafter be by any conveyance limited in remainder to the child or children of any person to be begotten, such child or children born after the decease of his, her or their parent, shall take the estate in the same manner as if he, she or they had been born in the lifetime of the parent, though no estate shall have been conveyed to support the contingent remainder after his death.

SEC. 9. All conveyances of real estate, and of any interest therein, duly executed and delivered, shall be held to carry with them the right to immediate possession of the premises or interest conveyed, unless a future day for the possession is therein specified.

SEC. 10. Covenants of seisin, peaceable possession, freedom from encumbrances, and of warranty contained in any conveyance of real estate or of any interest therein, shall be held to run with the premises, and to inure to the benefit of all subsequent purchasers and encumbrancers.

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[1] Titles subsequently acquired do not pass by a release of the grantee's present interest. *Frink* v. *Darst*, 14 Ill. 304. *Phelps* v. *Kellog*, 15 Ill. 137.

It is otherwise if the deed contain a covenant for further assurance. *Bennett* v. *Waller*, 23 Ill. 182.

SEC. 11. No right of action shall exist upon a covenant of warranty against a warrantor, when possession of the premises warranted hath been actually delivered to or taken by the warrantee, until the party menacing the possession of the grantee, his heirs, personal representatives or assigns, shall have commenced legal proceedings to obtain possession of the premises in question, and the grantor, after notice, shall have refused to defend at his own cost the premises in such action.

SEC. 12. In order that all conveyances which are executed by any attorney in fact, may be seen to be executed with the assent of the grantor, the power of attorney of the attorney in fact, duly proved or acknowledged, shall be (if it has not been) recorded in the same office in which the conveyances themselves are required to be recorded.

SEC. 13. Deeds, bonds and agreements in writing, conveying lands, or any interest therein, or affecting title thereto, may be acknowledged or proved before the following officers: *First.* When executed within this territory, before any justice of the supreme or district courts, before any clerk of the supreme or district courts, or the deputy of any such clerk, or before the probate judge of any county, such probate judge and such clerks severally certifying such acknowledgment under the seal of such court respectively; before the clerk and recorder of any county or his deputy, he certifying the same, or his deputy, under the seal of such county; before any notary public, he certifying the same under his notarial seal;[2] or before any justice of the peace within his county: *Provided*, That if such deed, bond or agreement be for the conveyance of lands situate beyond the county of such justice, there shall be affixed to his certificate of such acknowledgment, a certificate of the clerk of the proper county, under his hand and the seal of such county, to the official capacity of such justice of the peace, and that the signature to such certificate of acknowledgment is the true signature of such justice.[3] *Second.* Where executed out of this territory, and within the United States, or the territories thereof; before the secretary of any such state or territory, he certifying such acknowledgment under the seal of such state or territory, before the clerk of any court of record of such state or territory, or of the United States, within such state or territory, having a seal, such clerk certifying the acknowledgment under the seal of such court; before any other officer author-

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(2) A certificate of acknowledgment by a Notary Public, not under his notarial seal, is no proof of the execution of the deed. *Booth* v. *Cook*, 30 Ill. 132.

(3) The official character of the justice cannot be shown by parole. *Semple* v. *Miles*, 2 Scam. 315.

ized by the laws of such foreign state or territory to take and certify such acknowledgment: *Provided*, There shall be affixed to the certificate of such officer, a certificate by the clerk of some court of record[4] of the county, city or district wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be; that he has authority by the laws of such state or territory to take and certify such acknowledgment, and that the signature of such officer to the certificate of acknowledgment is the true signature of such officer; before any commissioner of deeds for such foreign state or territory, appointed under the laws of this territory, such commissioner certifying such acknowledgment under his hand and official seal. *Third.* When executed out of the United States; before any court of record of any foreign republic, kingdom, empire, state, principality or province having a seal, the acknowledgment being certified by the judge or justice of such court, to have been made before such court, and such certificate to be attested by the seal of such court; before the mayor or other chief officer of any city or town having a seal, and such mayor or other officer certifying the same under such seal; before any consul of the United States within such foreign country, he certifying the same under the seal of his consulate.

SEC. 14. No judge, clerk or other officer, shall hear or certify any such acknowledgment unless the person making the same shall be personally known to such officer to be the identical person who executed such deed, or shall be proved to be such by at least one competent, credible witness, and the officer hearing such acknowledgment shall state in his certificate thereof that the person making such acknowledgment was personally known to him to be the same person who executed such deed or other instrument in writing, or was proved to be such by the oath of some credible witness, to be named in such certificate in the presence of such officer.[5]

SEC. 15. When any such deed or instrument of writing has heretofore been or shall hereafter be executed, and not acknowledged according to law at the time of the execution thereof, such deed or instrument of writing may at any time subsequent be acknowledged by the makers thereof, in the manner herein-

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(4) A certificate by the Clerk of the county, under the seal of such county, is not a compliance with this provision. *Short* v. *Conlee*, 28 Ill. 313.

(5) A certificate that "personally appeared A. B., who is personally known to me to be the identical person who executed the foregoing deed," is not sufficient; the certificate must show that the grantor acknowledged the conveyance. *Short* v. *Conlee*, 28 Ill. 219.

A certificate that "personally appeared A. B., whom I am satisfied is the person whose name is subscribed," etc., is not sufficient. *Shepard* v. *Corriel*, 19 Ill. 303.

A substantial compliance with the statute is all that is required, in the form of the certificate. *Livingston* v. *Kettelle*, 1 Gilm. 116. *McConnell* v. *Reed*, 2 Scam. 371. *Wiley* v. *Bean*, 1 Gilm. 302.

before provided, or proof may be made of the execution thereof, before any officer authorized hereby to take acknowledgments of deeds in manner following. Such officer, when the fact is not within his own knowledge, shall ascertain from the testimony of at least one competent, credible witness, to be sworn and examined by him, that the person offering to prove the execution of such deed or writing, is a subscribing witness thereto, and thereupon such officer shall examine such subscribing witness upon oath or affirmation, and shall reduce his testimony to writing, and require the said witness to subscribe the same, indorsed upon or attached to such deed or other writing, and shall thereupon grant a certificate that such witness was personally known, or was proved to him by the testimony of at least one witness (who shall be named in such certificate) to be a subscribing witness[6] to the deed or instrument of writing to be proved, that such subscribing witness was lawfully sworn and examined by him, and his testimony by him, the said officer, reduced to writing, and by said subscribing witness subscribed in his presence; and if by the said testimony it shall appear that such witness saw the person whose name is subscribed to such instrument of writing, sign, seal and deliver the same, or that such person afterwards acknowledged the same to the said witness to be his free and voluntary act or deed, and that such witness subscribed the said deed or instrument of writing in attestation thereof, in the presence and with the consent of the person so executing the same, such proof if attested and the authority of the officer to take the same, duly proved in the same manner as required in the case of an acknowledgment, shall have the same force and effect as an acknowledgment of said deed or instrument of writing by the person or persons executing the same, and duly certified. When any such deed or instrument of writing has heretofore or shall hereafter be executed and recorded without due proof, attestation or acknowledgment, as required by law, a certified copy from such record may be proved or acknowledged in the same manner and with like effect as the original thereof, but no person shall be admitted to use such certified copy so proved, as evidence, except upon satisfactory proof that the original there-

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(6) A certificate as follows, "Personally came before me T. T., a subscribing witness to the within indenture, with whom I am personally acquainted," was held to be equivalent to a statement that the officer knew the person to be a subscribing witness. *Job* v. *Tibbetts*, 4 Gilm. 252.

A certificate that "personally appeared S. M., a subscribing witness to the within deed, who was made known to me by I. P., a credible witness," was held to be sufficient. *Reece* v. *Allen*, 5 Gilm. 238.

The law does not require the officer to certify that the witness is either competent or credible; he is authorized to take the evidence only of persons of this character, and it will be presumed that he has observed the law. *Delauney* v. *Bennett*, 4 Gilm. 490.

The proof that the witness is a subscribing witness, must be made by some person other than such witness. *Job* v. *Tibbetts*, 4 Gilm. 147.

of hath been lost or destroyed, or is beyond his power to produce.

Sec. 16. Powers of attorney for the conveying, leasing or releasing of any lands, tenements or hereditament, or any interest therein may be acknowledged and proved in the same manner as deeds.

Sec. 17. Married women may convey their estate in lands by uniting with their husbands in any conveyance thereof, and acknowledging the same separate and apart from their husbands, and the officer hearing such acknowledgment shall certify that the same was made upon examination separate and apart from, and out of the presence of the husband of such woman, that the contents, meaning and effect of such deed were by him fully explained to her. The provisions of section fifteen of this chapter shall not apply to conveyances by married women.[7]

Sec. 18. All deeds, conveyances, agreements in writing of, or affecting title to real estate or any interest therein, and powers of attorney for the conveyance of any real estate or any interest therein, may be recorded in the office of the recorder of the county wherein such real estate is situated, and from and after the filing thereof for record in such office and not before, such deeds, bonds and agreements in writing shall take effect as to subsequent *bona fide* purchasers and encumbrancers by mortgage, judgment or otherwise not having notice thereof.[8]

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(7) The deed of a married woman conveying her separate estate is inoperative, unless the requirements of the statute as to her acknowledgment are complied with. *Mariner* v. *Sanders*, 5 Gilm. 125. *Garret* v. *Moss*, 22 Ill. 364.

Equity cannot supply a defect in the acknowledgment of a conveyance by a married woman. *Russell* v. *Rumsey*, 35 Ill. 363.

Nor to correct errors in the deed. *Moulton* v. *Hurd*, 20 Ill. 137.

If the certificate be in other respects sufficient, it will not vitiate the conveyance that the officer certifies that the wife acknowledged that she relinquished her dower. *Chester* v. *Rumsey*, 26 Ill. 98.

But see *Lithgow* v. *Kavanagh*, 9 Mass. 161. *Lane* v. *Dollick*, 4 McLean 15. 7 Monr. R. 661.

A quit-claim deed of all the releasor's interest in the premises will not give the release precedence to the grantee in a prior deed unrecorded. *McConnel* v. *Reed*, 4 Scam. 117.

But it is otherwise if the first be void and inoperative in law. *Hamilton* v. *Doolittle*, 37 Ill. 482.

The record is notice only of those facts appearing by the record. *Curtiss* v. *Root*, 28 Ill. 376.

But the deed takes effect from the date of filing for record, and though erroneously recorded, or not recorded at all. *Merrick* v. *Wallace*, 19 Ill. 486.

Contra—*Beekman* v. *Frost*, 18 J. R. 544. 1 J. Ch. R. 300.

If a mortgagee permit his mortgage to be withdrawn from the files before it is recorded, the lien for the time being is lost, and though subsequently recorded, it will stand subsequent to intervening liens. *Kiser* v. *Huston*, 38 Ill. 252.

(8) To constitute one a subsequent *bona fide* purchaser, an actual payment of the consideration money is required. *Keys* v. *Test*, 33 Ill. 316. *Brown* v. *Welch*, 18 Ill. 343.

A purchaser from the heir, after conveyance by the ancestor, is a subsequent purchaser. *Kennedy* v. *Northup*, 15 Ill. 148. *Rupert* v. *Mark*, 15 Ill. 540.

Actual notice of the execution of a deed is equivalent to record notice. *Worden* v. *Williams*, 24 Ill. 72.

If one have information sufficient to put a reasonable person upon inquiry, he is chargeable with notice. *Doyle* v. *Teas*, 4 Scam. 202. *Cox* v. *Milner*, 23 Ill. 476. *Merrick* v. *Wallace*, 19 Ill. 486.

But that a creditor about to levy an attachment upon lands, had, at some former time, information that the debtor had conveyed them, will not, it seems, be sufficient to establish notice of such

SEC. 19. All such deeds, bonds, agreements and powers of attorney acknowledged or proved in accordance with this chapter, or acknowledged, attested or proved in accordance with the laws of this territory, or the local laws of the mining district wherein such real estate is situate, in force at the date of such acknowledgment, attestation or proof may be read in evidence, without, in the first instance additional proof of the execution thereof, and the record of any such deed, bond, agreement or power of attorney, whether an original record of any mining district, or a copy thereof deposited in the recorder's office of any county, in accordance with the laws of this territory (as a part of the records of such mining district) or a record of such recorder's office when the same appears by such record to be properly acknowledged, attested or proved in accordance with the laws of this territory, or of the proper mining district in force at the date of such acknowledgment, attestation or proof, or a transcript from any such record certified by the recorder of the proper county where such deed, bond, agreement or power of attorney ought by law to be of record, may, upon affidavit of the party desiring to use the same, that the original thereof[9] is not in his possession or power to produce, be read in evidence with like effect as the original of such deed, bond or power of attorney properly acknowledged, attested or proved as aforesaid.

SEC. 20. Deeds, bonds and agreements in writing, for the conveyance or encumbering of real estate, or any interest therein, shall be deemed from the time of being filed for record, notice to subsequent purchasers or encumbrancers though not acknowledged or proven according to law, but neither the same, nor the record thereof, shall be read as evidence, unless subsequently acknowledged or proved according to law, or unless their execution be otherwise approved in the manner required by the rules of evidence applicable to such writings, so as to supply the defects of such acknowledgment or proof; this section shall apply as well to all such deeds, bonds and other writings heretofore recorded, as to those hereafter to be recorded.

conveyance, unless all the circumstances lead to the conclusion that this fact was in his remembrance at the time. *Ogden* v. *Havens*, 24 Ill. 59.

Possession of lands, if upon and exclusive, is notice to all the world of all the rights of the occupant therein; if the party in possession claim by deed, his possession is ordinarily equivalent to the recording of such deed. *McConnel* v. *Reed*, 4 Scam. 122. *Rupert* v. *Mark*, 15 Ill. 540. *Morrison* v. *Kelly*, 22 Ill. 610. *Metropolitan Bank* v. *Godfrey*, 23 Ill. 579. *Brown* v. *Gaffney*, 28 Ill. 157. *Truesdale* v. *Ford*, 37 Ill. 213.

Of two conveyances from the same grantor executed at different times to *bona fide* purchasers, that which is first recorded, will take precedence; in such case possession is not equivalent to recording. *Worden* v. *Williams*, 24 Ill. 72. *Reed* v. *Kemp*, 16 Ill. 445.

(9) As to the proof of loss, necessary to admit secondary evidence of the contents of a lost deed. See *Dickenson* v. *Bender*, 25 Ill. 186. *Bestor* v. *Powell*, 2 Gilm. 125. *Newson* v. *Leester*, 13 Ill. 179. *Mariner* v. *Sanders*, 5 Gilm. 121. *Booth* v. *Cook*, 20 Ill. 131. *Roberts* v. *Haskill*, 20 Ill. 68.

SEC. 21. Deeds, bonds, agreements in writing, and powers of attorney for the conveyance of lands, or any interest therein, or affecting the title thereto, executed in any foreign country, and the acknowledgment or proof of execution thereof executed, heard, taken and certified in the language of such foreign country, and a translation thereof into the English language, and thereto attached by any person learned in the language of such foreign country, and by such person sworn to be a true and correct translation thereof before any officer or court authorized to take the acknowledgment of deeds, shall entitle such deed, bond, agreement or power of attorney, and the certificate of acknowledgment or proof thereof to be read in evidence, and recorded with like effect, as if written in the English language; but such translation shall not be conclusive upon any party desiring to question the correctness thereof. No such deed or other writing shall be entitled to record unless accompanied by such sworn translation.

SEC. 22. Every certificate of the acknowledgment or proof of any deed, bond, agreement, power of attorney or other writing for the conveyance of real estate or any interest therein, or affecting title thereto, shall be subscribed by the officer certifying the same with his proper hand, and shall be indorsed upon or attached to such deed or other writing.

SEC. 23. The board of county commissioners of any county, or the common council of any city, may by order, to be entered of record among the proceedings of such board or council, appoint a commissioner to sell and convey any real estate belonging to such city or county, and to affix to any conveyance thereof the seal of such city or county; and such conveyance executed in accordance with such order shall have the effect to transfer to the grantee named, all the estate of such county or city in the real estate so conveyed.

SEC. 24. Private corporations authorized by law to convey any of their real estate, may convey the same in the manner authorized by this chapter, or by deed under their common seal, subscribed by their president or other head officer.

SEC. 25. No covenant expressed or implied in the deed of any married woman shall have any effect to bind such married woman, or her heirs, save so far as to pass to the purchaser named therein all her present estate in the real estate therein described, thereby expressed to be conveyed.

SEC. 26. Deeds executed, or which may hereafter be executed by any sheriff or other officer for real estate sold upon execution, or pursuant to the decree or order of any court, shall be acknowledged or proved, and admitted to record in like manner and with like effect as other deeds. The successor in office of any sheriff or other officer, shall have authority to excute deeds for real estate sold by his predecessor upon execution at law, or the judgment, order, or decree of any court of equity.[10]

SEC. 27. The terms "land" and "real estate," as used in this chapter, shall be construed as co-extensive in meaning with the term "lands, tenements and hereditaments," and as embracing mining claims and other claims, and chattels real. The term "deed" includes mortgages, leases, releases and every conveyance or encumbrance under seal.

SEC. 28. Whenever any county has been, or hereafter shall be divided, and a portion of the territory thereof erected into a new county, or added to some other county, the board of commissioners of such new county, or of the county to which such territory is added, may at the expense of their own county procure to be transcribed from the records of the county to which such territory was originally attached, copies of all deeds, bonds, agreements, powers of attorney, and other writings conveying or affecting title to any real estate situate within the territory so separated, and for this purpose the person whom such board may appoint, shall have free access at all reasonable times to the records of the original county. Such records shall be transcribed into a suitable, well-bound book, and the person transcribing the same shall affix thereto at the end of all such transcripts his affidavit that the same were by him transcribed from the records of such original county, and are true, correct and examined copies of such records. Such book of transcribed records shall be deposited in the office of the recorder of the new county, or of the county to which such territory is assigned, as a part of the records thereof; and such transcribed records or copies therefrom certified by the recorder in whose office the same are deposited, shall have the same effect as evidence as the original records of such deeds, bonds, agreements, powers of attorney, and other writings.

SEC. 29. The governor of this territory may appoint and commission in any state or territory of the United States one or more commissioners, to continue in office during the pleasure of the governor, who shall have power to administer oaths and to take depositions, and the proof and acknowledgment of deeds, or other instruments to be used or recorded in this territory.

SEC. 30. Before any such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath before some officer authorized to administer oaths, in the state or territory for which he is appointed, that he will faithfully discharge the duties of his said appointment, which oath together with an impression in wax of his

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(10) A failure of the sheriff to acknowledge the conveyance, or an irregular acknowledgment, will not prejudice the rights of the purchaser. *Fail* v. *Goodlittle*, Breese 156.

seal of office shall be filed in the office of the secretary of this territory.

SEC. 31. This chapter shall not be so construed as to embrace last wills and testaments.

Prior Statutes Repealed. An act concerning conveyances of real estate. Approved November 5, 1861. Laws 1861, p. 64.

An act to authorize the appointment of Commissioners of Deeds. Approved October 28, 1861. Laws 1861, p. 46.

An act to provide for recording contracts relating to land, and for other purposes. Approved Nov. 4, 1861. Laws 1861, p. 58.

CHAPTER XVIII.

CORPORATIONS.

SECTION

ARTICLE I.—*Mining, Manufacturing, Road and Railroad Companies.*

1. Corporations may be formed by certificate of association filed in office of county clerk, and duplicate in office of secretary of territory.
2. Secretary to record certificate; copy to be evidence; general powers of corporation.
3. Certificate may designate one or more places of business of corporation.
4. Certificate to state place of business of corporation.
5. Business managed by trustees; election of; notice of election; vacancies, how filled.
6. Failure to elect trustees not to dissolve corporation.
7. Officers of company.
8. Assessments upon stock; how payment enforced.
9. Stockholders, or trustees in certain cases, may make by-laws.
10. Stock personalty; how transferred; funds of company not to be used in purchase of stock in any corporation.
11. Certified copy of certificate of incorporation *prima facie* evidence.
12. Stockholders liable for debts of company; limitations; capital stock to be paid in, one half in one year, remainder in five years; failure, to dissolve corporation.
13. Trustees may purchase property, and issue full paid stock.
14. Certificate of final payment of stock to be made.
15. Certificate of amount of stock, and amount paid in, to be published annually on the first of January; failure to publish same to subject trustees to debts of company.
16. Declaring dividend while company insolvent, or which will diminish stock, to subject trustees to the future debts of company while in office; how trustees may exempt themselves.
17. No loan of money to be made to any stockholder; penalty.
18. For any false certificate or report, made pursuant to law, officers of liable for debts of company contracted while in office.
19. Person holding stock, as executor or administrator or guardian, not liable for debts of company; nor person holding stock as security; the pledgor and the estate in hands of guardian, executor, etc., liable in such case.
20. Executor, administrator or guardian, or pledgor of stock may vote, representing the same at meetings of stockholders.
21. Legislature may repeal or alter this article; not to impair remedies against stockholders or corporation for any liability previously incurred.
22. Corporations heretofore formed may increase or diminish stock, or extend its business in accordance with this article; stock not to be reduced so as to be exceeded by debts; may have advantage of this act, as follows:
23. Trustees to publish notice for six weeks, and mail notice to each stockholder, specifying object of meeting and time and place; vote of two thirds of stockholders necessary.
24. Meeting how organized; certificate of proceedings made, acknowledged and recorded as required in section one; effect thereof.
25. If indebtedness exceed amount of stock, trustees assenting liable for excess.
26. Stock-book, how kept; to be open for examination; transfer of stock to be entered therein; book evidence against corporation or stockholders; penalty on corporation for failure to keep book; penalty on officers for violation of this section.
27. Stockholder owning fifteen per cent. of stock may require statement of affairs of company from treasurer.
28. *Road Companies:* Certificate of incorporation of, what to contain; rates of toll when to be fixed by county commissioners; not authorized to locate road upon any previously existing toll-road or public highway.
29. No company to receive toll when road not in good repair; party who has paid toll in such case, may complain to any justice; fine; order forbidding collection of toll until road repaired.
30. Refusal to pay toll; fine, how collected.
31. *Ditch Companies:* Certificate, what to contain.
32. Not to interfere with prior companies, nor any miner, miller or other having prior rights.
33. To whom ditch companies shall furnish water; county commissioners to fix rates.

SECTION

34. Ditch company to keep banks of ditch in good condition.
35. Certificate of incorporation of ditch company, what to state.
36. *Bridge or Ferry Company:* Certificate, what to state.
37. Bridge or ferry to be kept in good condition; if destroyed by flood or otherwise to be rebuilt in nine months, or charter forfeited.
38. Rates of toll to be posted; no tolls to be received unless bridge in good condition; proceedings upon complaint in such case; penalty for receiving greater tolls than allowed by commissioners.
39. *Tunnel Company:* Certificate, what to state.
40. To have certain territory on lodes discovered; right of way.
41. *Telegraph Company:* Certificate, what to state; authority of company.
42. All companies formed under this article to commence work in ninety days from organization; road, telegraph, bridge, ferry and flume companies to complete work in two years; *proviso.*
43. Powers of corporations organized under this article, enumerated.
44. These powers to vest in any corporation, though not specified in certificate, or act of incorporation.
45. Malicious injury to any road, ditch, flume, etc.; penalty for.
46. No corporation to issue bills to circulate as money.
47. Companies organized under act of August 15, 1862, may surrender certificates and organize under this act.
48. How corporations may condemn and take real estate necessary for their corporate purposes; assessment how made; proceedings thereon.
49. When one mile of road completed, county commissioners to establish rates of toll; corporation may erect toll-gates each ten miles; road to be completed in two years after rates prescribed.
50. Rates of toll to be fixed every two years.
51. Road located in two or more counties, commissioners of each county to fix rates of toll in that county.
52. Commissioners of any county or mayor of any town may subscribe in corporate name to the stock of any railroad or wagon-road company, and issue bonds of corporation in payment.
53. No such subscription to be made but upon vote of a majority of electors in such town or county; manner of calling and holding such election; stock may be sold in liquidation of bonds.
54. Tax to be collected annually in such town or county to pay interest upon such bonds, and after ten years five per cent. per annum of the principal; tax to be remitted to territorial treasurer; how applied.
55. All such bonds to be registered by the auditor; fees of auditor; auditor to include the amount due on said bonds and the amount collected and paid thereon, in his report to the assembly; penalty for a failure by any officer to levy, collect and remit the tax herein provided for.
56. Capital stock of such wagon-road or railroad company to be divided into shares of \$100; to be personal property; may be sold on execution; how transferred; liable to monthly assessments of ten per cent.; not to be voted on unless assessments paid; assessments may be collected by action of debt, or stock may be forfeited; issue of stock how fixed.
57. Any railroad company accepting this act may make running or business arrangements with other roads; may apply any amount of stock to any part of road; may consolidate with other companies; elect directors; may change corporate name; may transfer their subscriptions to their stock by any county or town.
58. This act to be available to any company accepting same.
59. Not to take effect as to any railroad company, unless an acceptance be filed with secretary of territory; not to affect any proceedings for issuing county bonds taken or made between December 1, 1867, and February 1, 1868.

SECTION

60. This act in force from its passage.
61. Any railroad company may lease their road and appurtenances, or consolidate with any other company; such lease or consolidation not to take effect until approved by those holding two thirds majority of the stock.
62. May borrow money at a rate of interest not exceeding ten per cent., and secure same by deed of trust of the corporate property.
63. May accept donations of lands for right of way, or depot grounds, or to be sold to aid in construction or operation of road; lands acquired by condemnation shall vest and remain in corporation so long as devoted to purpose for which condemned.
64. Counties may subscribe to the stock of any railroad company located in such county; issue bonds of county in payment of such subscription; such subscription to be approved by a majority of legal voters, at an election first called for that purpose; notice of such election.
65. Tax to be collected annually to pay the interest upon such bonds; surplus of tax to be applied to purchase of bonds.
66. Term of existence of railroad companies not to exceed fifty years.
67. Bonds issued by counties in pursuance of the votes of such county prior to February 1, 1868, to be numbered and registered before issue; bonds purchased for cancellation to be returned to county clerk, who shall enter the same as cancelled, on the registry; interest coupons paid, to be noted on the registry.
68. After ten years, special tax to be levied annually sufficient to pay five per cent. of principal of such bonds; such tax to be applied by county treasurer to purchase of bonds: county treasurer to remit the tax collected for payment of interest, to agent appointed by county commissioners, who shall return coupons when paid, to county clerk; county treasurer to report to county clerk annually amount received and disbursed on account of principal of such bonds.
69. County commissioners to publish annually a report of amount of bonds outstanding, amount of interest paid and due thereon, amount and number of bonds purchased and cancelled.
70. This act in force from its passage.
71. Mayor and council of cities may authorize gas companies to excavate streets for laying down conducting pipes.
72. Corporations formed for the purpose of furnishing illuminating gas, may purchase or lease coal lands; may sell coke and other coal.
73. Any corporation which may expend \$50,000 in purchasing site for works and apparatus, and in construction of works, shall have exclusive right to supply said city and its inhabitants with illuminating gas during the existence of such company; *proviso,* as to price charged; *proviso,* company to lay down two miles of pipes within two years from date of incorporation.
74. Default of such corporation to expend at least \$20,000 in purchase of site and apparatus and construction of works, to dissolve corporation.
75. Trustees to report expenditures to mayor and council of city; failure to make report to work a forfeiture of charter.
76. Mayor and council after two years from date of incorporation may require company to extend their street pipes two miles in addition to the two miles hereinbefore required; company to complete such extension in one year; on default city council may reduce price of gas.
77. Term of existence of corporation not to exceed thirty years.

ARTICLE II.—*Religious and Benevolent Societies, Libraries, Colleges, Academies, Fire and Military Companies.*

1. Not less than three persons may associate

SECTION
themselves, *First*, for the support of the gospel; *second*, to maintain a house of public worship; *third*, to provide and maintain burial places; *fourth*, to establish and maintain a library or cabinet of specimens; *fifth*, to establish a college or academy; *sixth*, to promote the diffusion of useful information; *seventh*, for the mutual assistance of the members in time of sickness or necessity; *eighth*, to establish hospitals for the sick; *ninth*, to establish lodges of free masons, odd-fellows, and other like societies; *tenth*, to establish and maintain fire companies; *eleventh*, to establish companies and regiments of military; *twelfth*, to establish societies for the preservation of the history and antiquities of this country; manner of becoming incorporated.
2. Corporate existence and powers, how proven.
3. General powers of corporations formed hereunder; limitations on power to hold real estate.
4. Corporators may adopt by-laws, for certain purposes.
5. Corporations may raise money, how.
6. May divide their property into shares.
7. Assessments upon stock, how made and enforced: no other property to be taken for assessment.
8. No dividend to be declared until final dissolution.
9. Officers of certain corporations not to receive salary or make any contract with corporation.
10. Powers of trustees of religious societies.
11. Trustees of colleges, etc., may prescribe rules for government of youth attending; may confer degrees.
12. Military companies may provide fines for breach of any military regulation; such companies and regiments subject to command of governor.
13. This article subject to alteration by legislature.
14. Incorporation of societies of turner bund.
15. Certificate of incorporation; where to be filed; what to contain.
16. Any association hereunder may take and hold real estate and convey the same.
17. May make by-laws for certain purposes.
18. May hold and sell personal property.
19. Corporation may be dissolved by certificate of officers; *proviso*.
20. Capital stock not to exceed one million dollars; term of existence not to exceed ninety-nine years.
21. This act in force from its passage.

SECTION
22. Not less than seven persons may associate themselves to organize masonic lodges.
23. Certificate of incorporation, where filed; what to contain.
24. Any such masonic body may take, hold and convey real estate.
25. May make by-laws.
26. May hold and sell personalty.
27. May be dissolved by certificate of certain officers.
28. Masonic bodies not incorporated may take and hold real estate and convey same, under certain restrictions.
29. Rights of such unincorporated bodies in such real estate, how protected.
30. This act to apply to the order of odd-fellows.
31. To be a public act.
32. To take effect from its passage.

ARTICLE III.—*Foreign Corporations*.

1. Foreign corporations to file with clerk of county in which they do business, copies of charter and the laws under which they are incorporated.
2. Penalty for failure to comply with this article.
3. Such certificates and statutes to be filed and preserved in county clerk's office; copies to be evidence.

ARTICLE IV.—*Of the dissolution of Corporations*.

1. The trustees or managers of any corporation hereafter dissolved to be the trustees for the creditors and stockholders; powers of such trustees.
2. Title to corporate property to vest in such trustees; action for recovery of such property and debts, how brought.
3. Action by or against corporation not to abate by dissolution of corporation; trustees may be made parties.
4. Corporation dissolved may notwithstanding prosecute suits for the use of others.
5. Lien of judgments and executions not to be dissolved or suspended by dissolution of corporation.
6. Execution not to issue upon judgments recovered against any corporation after the dissolution.
7. This article not to impair the jurisdiction of the court of chancery; trustees to be subject to the control of that court; may be required to give bond; and for any default in their duties may be removed by the court.

SEC. 1. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business;[1] construct wagon roads, railroads, telegraph lines, dig ditches, build flumes, run tunnels, or carry on any branch of business designed to aid in the industrial or productive interests of the country; may make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, duplicate certificates, in writing, in which shall be stated the corporate name of the said company, and the objects for which the company shall be formed; the amount of the capital stock of the said company, the term of its existence, not to exceed twenty years, the number of shares of which the said stock shall consist, the number of trustees and their names,

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(1) Associations for the manufacture of lumber, flour and meal, or for cutting and vending ice, may become incorporated under this provision. *Cross* v. *Pinckneyvill Mill Co.*, 17 Ill. 54. *Tarbell* v. *Page*, 24 Ill. 47. *Baker* v. *Admr. of Backus*, 32 Ill. 97.

who shall manage the concerns of the said company for the first year, and the name of the town and county in which the operations of the said company shall be carried on, and shall file one of said certificates in the office of the county clerk of each county wherein the business of the corporation is to be carried on, and one thereof in the office of the secretary of the territory.[2]

SEC. 2. When the certificate shall have been filed as aforesaid, the secretary of the territory shall record and carefully preserve the same in his office, and a copy thereof duly certified by the secretary of the territory, under the great seal of the territory of Colorado, shall be evidence of the existence of such company; and the persons who shall have signed and acknowledged the same, and their successors shall be a body politic and corporate in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this territory, and they and their successors may have a common seal, and may make or alter the same at pleasure, and they shall, by their corporate name, be capable in law of acquiring by purchase, pre-emption, donation or otherwise, and holding or conveying by deed or otherwise, any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in the certificate.

SEC. 3. Any certificate hereafter filed and recorded under the provisions of this article, may designate one or more places where the company may carry on their business.

SEC. 4. If any company shall be formed under this article, for the purpose of carrying on any part of its business in any place outside of this territory, the said certificate shall so state, and shall also state the name of the town and county in which the principal part of the business of said company, within this territory, is to be transacted, and said town and county shall be deemed the town, place, and county in which the operations and business of the company are to be carried on, and its principal place of business, within the meaning and provisions of this article.

SEC. 5. The stock, property and concerns of such company, shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders in said company, and who shall (except the first year) be annually elected by the stockholders, at such time and place as shall be directed

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(2) It seems that a failure to file the certificate in the office of the County Clerk, while it may be such a non-compliance with the statute as would sustain a *quo warranto* on behalf of the people, will not entitle a third person to question the existence of the corporation in a collateral action. *Baker* v. *Admr. of Backus*, 32 Ill. 97.

If the certificate be not a substantial compliance with the requirements of the statute, no corporate rights or character will attach to the association. *Ferraria* v. *Vasconcelles*, 23 Ill. 458.

by the by-laws of the company; and public notice of the time and place of holding such elections shall be published not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided one half the stock is represented; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees by death, resignation or otherwise, it shall be filled for the remainder of the year, in such manner as shall be provided by the by-laws of the said company.

SEC. 6. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected.

SEC. 7. There shall be a president of the company who shall be designated from the number of the trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company by its by-laws may require.

SEC. 8. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such time and in such payments or instalments as the trustees shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

SEC. 9. The stockholders of such corporation, or the trustees, if the certificate of incorporation so provide, shall have power to make such prudential by-laws as they shall deem proper, for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this territory, and prescribing the duties of officers, artificers and servants that may be employed; for the appointment of all officers and for carrying on all kinds of business within the objects and purposes of such company.

SEC. 10. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company, but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon, and it shall not be lawful for such company to use any of their funds for the purchase of stock in any other corporation, nor for the purchase of stock in their own company or corporation, in the corporate name, nor shall such company or corporation acquire or hold any stock or share therein, except such as may be forfeited for the non-payment of assessments thereon.

SEC. 11. The copy of any certificate of incorporation filed and recorded in pursuance of this article, certified by the secretary of the territory under the great seal of the territory of Colorado, to be a true copy, and the whole of such certificate shall be received in all courts and places as *prima facie* evidence of the facts therein stated.

SEC. 12. All the stockholders of every company incorporated under the provisions of this article, shall be severally, individually liable to the creditors of the company in which they are stockholders, to the amount of unpaid stock held by them respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited, shall be paid in, and a certificate thereof shall have been made and recorded as prescribed in the following sections, and the capital stock so fixed and limited shall all be paid in, one half thereof within one year, and the other half thereof within five years from the incorporation, or said corporation shall be dissolved.[3]

SEC. 13. The trustees of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full stock, and not liable to any further calls; neither shall the holders thereof be liable to any further payments under the provisions of the tenth section of this article, but in all statements and reports of the company to be published, this stock shall not be stated or reported as being issued for cash

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(3) A failure to comply with this provision, does not of itself work a dissolution of the corporation; to accomplish this, the judgment of a court of competent jurisdiction, in proceedings instituted for the purpose, is necessary. *Baker* v. *Admr. of Backus*, 32 Ill. 110.

Nor are the stockholders, after such a default, even as between themselves co-partners. *Ibid.*

In an action against a stockholder, for the debt of the corporation, under this section, the declaration must show the amount of unpaid stock held by the defendant. *Sherman* v. *Smith*, 20 Ill. 352.

paid into the company, but shall be reported in this respect according to the facts.

SEC. 14. The president and a majority of the trustees, within thirty days after the payment of the last instalment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president and a majority of the trustees, and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of the said company is carried on.

SEC. 15. Every such company shall annually, within twenty days from the first day of January, make a report which shall be published in some newspaper published in the town, city or village, or if there be no newspaper published in said town, city, or village, then in some newspaper published nearest the place where the business of said company is carried on, which shall state the amount of capital and of the proportion actually paid in, and the amount of existing debts; which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on; and if any of said companies shall fail so to do, all the trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such report shall be made.

SEC. 16. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office: *Provided*, That if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing, with the clerk of the company, and with the clerk of the county, they shall be exempt from the said liability.

SEC. 17. No loan of money shall be made by any such company to any stockholder therein, and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest for all the debts of the company contracted before the re-payment of the sum so loaned.

SEC. 18. If any certificate or report made, or public notice given by the officers of any such company in pursuance of the provisions of this article, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company, contracted while they are stockholders or officers thereof.

SEC. 19. No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustees shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name.

SEC. 20. Every such executor, administrator, guardian or trustee, shall represent the shares of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid may nevertheless represent the same at all such meetings and may vote accordingly as a stockholder.

SEC. 21. The legislature may, at any time, alter, amend, or repeal this article, but such amendment or repeal shall not take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

SEC. 22. Any corporation or company heretofore formed either by special act or under the general law, and now existing, or any company which may be formed under this article may increase or diminish its capital stock by complying with the provisions of this article, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section one of this article, subject to the provisions and liabilities of this article. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company heretofore formed under the general law, or any special act, may come under and avail itself of the privileges and provisions of this article by complying with the following provisions, and thereupon such company, its officers and stockholders shall be subject to all the restrictions, duties and liabilities of this article.

SEC. 23. Whenever any company shall desire to call a meeting of stockholders for the purpose of availing itself of the privileges of this article, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least six weeks previous to the day fixed for holding such meeting; specifying the object of the meeting, the time and place, when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and a vote of at least two thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this article.

SEC. 24. If at any time and place specified in the notice provided for in the preceding sections of this article, stockholders shall appear in person or by proxy, in number, representing not less than two thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this article, a certificate of the proceedings showing a compliance with the provisions of this article, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed and recorded as required by the first section of this article, and when so filed and recorded, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions, and be subject to the liabilities of this article as the case may be.

SEC. 25. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of such company.

SEC. 26. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who are, or shall, within six years, have been stockholders of such company, and showing their place of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, and the amount of stock actually paid in; which book shall, during the usual business hours of the day, on every day except Sunday, and the fourth day of July, be open for the inspection of the stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company in the county where its business operations shall be located; and any and every such stockholder, creditor, or representative shall have a right to make extracts from such books; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this article, until it shall have been entered therein as required by this section by an entry showing to and from whom transferred; such book shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company, or against any one or more stockholders. Every officer or agent of any such company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor and the company shall forfeit and pay to the party injured, a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom, and every company that shall neglect to keep such book open for inspection as aforesaid, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the people by the district attorney of the county in which the business of such corporation shall be located; and when so recovered, the amount shall be paid into the treasury of such county for the use of common schools therein.[4]

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(4) A failure to keep the record required by this section does not impair the corporate right or character. *Baker* v. *Adm'r of Backus*, 32 Ill. 108.

SEC. 27. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this article shall present a written request to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer, within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times, during business hours, be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer shall neglect or refuse to comply with any of the provisions of this article, he shall forfeit and pay to the person presenting said written request, the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter, until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

SEC. 28. When any three or more persons shall associate to form a company for the purpose of constructing a wagon-road under the provisions of this article, their certificate of incorporation in addition to the matters hereinbefore required to be stated therein, shall specify the termini of said road and the route of the same, as near as may be; and the said company shall have the right of way over the line named in the certificate, to erect toll-gates, not to exceed one to every ten miles of road, and to collect toll thereat at the rates prescribed by the county commissioners or the tribunal transacting county business, upon the application of such corporation, either at or before the time of commencing such road, or after the completion thereof: *Provided*, That such rates of toll shall remain in force and may be collected from persons travelling such road for two years from the time of completing such road; and thereafter at the expiration of every two years, the county commissioners or tribunal transacting county business in each county, through which such road passes, shall fix and regulate such rates of toll, but not at higher rates than those originally prescribed; and *Provided further*, That nothing in this article shall be so construed as to authorize any corporation formed under the provisions hereof, to locate their road, railroad, ditch, or flume, or any part thereof, upon any toll-road previously existing, nor upon any public highway, heretofore, and at the time of the organization of such corporation, used and travelled as such, except it may be necessary to cross such toll-road or public highway; all such rates of toll shall be conspicuously posted at every gate upon such road.

SEC. 29. No company formed under this article shall demand and receive toll whenever said wagon-road is not in reasonably good repair, and any person having paid toll on said road and shall find the same in bad condition and unsafe to travel with loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the road is located, and it shall be the duty of said justice of the peace to summon the said company, or any agent of said company to appear before him to answer in said complaint, within not over five days from the date of said complaint; and if it be found that said road is in bad condition or unsafe to travel, it shall be the duty of said justice to impose a fine of not less than ten dollars nor more than twenty-five dollars, to be collected from said company, and said justice shall issue his order that no toll be collected upon said road or any part thereof until it is put in good repair.

SEC. 30. Any person after toll shall have been demanded by the regularly authorized toll collector, who may be found travelling upon said road and refusing to pay said toll, shall be subject to a fine of not less than five dollars nor more than ten dollars for such offence, the same to be collected before any justice of the peace in the county wherein such road is located.

SEC. 31. Whenever any three or more persons associate under the provisions of this article, to form a company for the purpose of constructing a ditch for the purpose of conveying water to any mines, mills or lands, to be used for mining, milling or irrigating of lands, they shall, in their certificate, in addition to the matters required in section one of this article, specify as follows: The stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch, as near as may be, and the use to which the said water is intended to be applied.

SEC. 32. Any ditch company formed under the provisions of this article, shall have the right of way over the line named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate, through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those acquired under this article, and by virtue of said certificate. Nor shall the water of any stream be directed from its original channel to the detriment of any miners, mill-men, or others along the line of said stream, who may have a priority of right, and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists along said stream.

SEC. 33. Any company constructing a ditch under the provisions of this article shall furnish water to the class of persons using water in the way named in the certificate, as the way the water is designated to be used, whether miners, mill-men, or farmers, whenever they shall have water in their ditch unsold, and shall at all times give the preference to the use of the water in said ditch to the class of persons so named in the certificate, the rates at which water shall be furnished to be fixed by the county commissioners, or the tribunal transacting county business, as soon as such ditch shall be completed and prepared to furnish water.

SEC. 34. Every ditch company organized under the provisions of this article, shall be required to keep the bank of their ditch in good condition, so that the water shall not be allowed to escape from the same to the injury of any mining claim, road, ditch or other property, and whenever it is necessary to convey any ditch over, across, or above any lode or mining claim, that the company shall, if necessary to keep the water of said ditch out, or from any claim, flume the ditch so far as necessary to protect such claim or property from the water of said ditch.

SEC. 35. When any company shall organize under the provisions of this article to form a company for the purpose of constructing a flume, their certificate, in addition to the matters required in the first section of this article, shall specify as follows: The place of beginning, the termini, and the route so near as may be, and the purpose for which such flume is intended, and when organized according to the provisions of this article, said company shall have the right of way over the line proposed in such certificate for such flume: *Provided*, It does not conflict with the right of any farmer, fluming, ditching or other company.

SEC. 36. When any three or more persons shall associate under the provisions of this article, to form a company for the purpose of constructing a bridge or establishing a ferry over any of the streams of water in this territory, their certificate, in addition to the matters required in the first section of this article, shall specify as follows: The place where said bridge or ferry is to be built or established, and on what streams, and that the banks on both sides of the stream where the said bridge or ferry is to be built or established are owned by said company, or that they have obtained in writing the consent of the owners of the banks where the said bridge is to be built, to erect the said bridge or establish the said ferry as aforesaid, or that the banks at such place are a public highway.

SEC. 37. Any bridge built or ferry established under the provisions of this article, shall at all times be kept in good and safe condition for travel, both night and day, unless the same be rendered impassable by reason of flood or high water, and any bridge or ferry so built or established shall, if destroyed by flood, fire or other causes, be rebuilt or established within a period of nine months from such destruction, or the rights acquired under this article shall be forfeited and cease to exist.

SEC. 38. The company, previous to receiving any toll upon said bridge or ferry, shall set up and keep in a conspicuous place on the said bridge or ferry a board, on which shall be written, painted or printed, in a plain, legible manner, the rates of toll, which rates of toll shall have been prescribed by the county commissioners, or the tribunal transacting county business in said county, and if any company shall demand or receive any greater rate of toll than the rate prescribed by said tribunal, then they shall be subject to a fine of ten dollars, and no company formed under the provisions of this article shall demand or receive tolls whenever said bridge or ferry is not in a good and safe condition for travel, and any person having paid toll on such bridge or ferry, and finding the same in a bad or unsafe condition for loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the bridge or ferry is located, who shall proceed as is provided in section twenty-nine of this article.

SEC. 39. Whenever any three or more persons shall associate under the provisions of this article, for the purpose of running a tunnel for mining for gold, quartz or other ore, their certificate of incorporation shall specify, in addition to the matters required by the first section of this article, as follows, to wit: Where said tunnel is to be run; the place of commencement; course and termination, and the minerals or ore designed to be excavated.

SEC. 40. Any company formed under the provisions of this article, for the purpose of excavating a tunnel, shall have and hold two hundred and fifty feet on each side of said tunnel, on all lodes discovered by them while excavating said tunnel; one hundred feet on all lodes discovered by others crossing said tunnel, after the commencement of the same, and through all lodes discovered previous to the commencement of said tunnel, they shall have the right of way.

SEC. 41. Whenever any three or more persons associate under the provisions of this article, to form a company for the purpose of constructing a line or lines of magnetic telegraph in this territory, their certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point, along and upon any of the public roads, by the erection of the necessary fixtures, including posts, piers and abutments, necessary for the wires: *Provided*, That the same shall not incommode the public in the use of said roads or highways.

SEC. 42. Any company formed under the provisions of this article for the purpose of constructing any road, ditch, flume, bridge, ferry or telegraph line, shall, within ninety days from the date of their certificate, commence work on such road, ditch, flume, bridge, ferry or telegraph line as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed, and the time of the completion of any such road, ditch, bridge, ferry or telegraph line shall not be extended beyond a period of two years from the time work was commenced as aforesaid; and any company failing to commence work within ninety days from the date of certificate, or failing to complete the same within two years from the time of commencement as aforesaid, shall forfeit all right to the route so claimed, and the same shall be subject to be claimed by any other company; the time for the completion of any flume constructed under the provisions of this article, shall not be extended beyond a period of four years: *Provided*, That this section shall not apply to any ditch or flume for mining purposes, constructed through any grounds owned by the corporation.

SEC. 43. Every corporation under the provisions of this article, as such, has power:

1st, To have succession by its corporate name for the period limited in its certificate of charter.

2d, To sue and be sued, complain and defend in any court of law or equity.

3d, To make and use a common seal, and alter the same at pleasure.

4th, To hold, purchase and convey such real and personal estate as the purpose of the corporation may require.

5th, To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

6th, To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

SEC. 44. The powers enumerated in the preceding section, shall vest in every corporation that shall hereafter be created, although they may not be specified in the certificate, or in the act under which it shall be incorporated, but no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated.

SEC. 45. Any person who shall wilfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, telegraph line, or any of the fixtures, tools, implements, appurtenances, or any property of any company which may be organized under the provisions of this article, upon conviction thereof before any court of competent jurisdiction in the county where the offence shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court, said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, which shall be paid into the county treasury for the use of common schools, and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit.

SEC. 46. Nothing in this article shall be so construed as to authorize any company organized under the same, to issue notes or bills for circulation as money.

SEC. 47. Any company organized under and by virtue of the provisions of an act entitled An act to enable road, ditch, manufacturing and other companies to become bodies corporate, approved August 15, 1862, may surrender their certificate to the secretary of the territory by the certificate of the president of said company, filed in the office of said secretary, and become a body corporate and politic under the provisions of this article, by complying with all and singular the provisions thereof.

SEC. 48. Whenever any road, railroad, ditch, telegraph or fluming company, organized or to be organized under the provisions of this chapter, or any law of this territory, shall not have acquired by gift or purchase any land, real estate or claim required for the construction or maintenance of their road, railroad, ditch, telegraph or flume, or which may be affected by any operation connected with the construction or maintenance of the same,[5] the said corporation may present to the probate judge of the county wherein such lands, real estate or claim shall be, a petition signed by the president, attorney or agent of the same, describing with convenient accuracy and certainty, by map or otherwise, the lands, real estate or claims so required to be taken or affected as aforesaid, setting forth the name and residence of each owner or other person interested therein as owner, lessee or encumbrancer, as far as known to such president, attorney or agent, or appearing of record, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and persons interested, for the taking or injuriously affecting such lands, real estate or claims as aforesaid; the probate judge shall have satisfactory evidence that notice of an intended application and the time and place thereof, for the appointment of appraisers between said corporation

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(5) The power of a railroad corporation to condemn lands for right of way and other like purposes, is not exhausted by the completion of the road. *C. B. & Q. R. R. Co.* v. *Wilson*, 17 Ill. 123.

and the owners and persons interested in such lands, real estate and claims, has been given at least ten days previously, to such owners personally at their residence, or on the premises, or by the publication thereof in a newspaper printed in the county in which such lands, real estates or claims shall lie, or if no newspaper is published in said county, then by posting three or more notices in some public places in said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county, known to such president, attorney or agent, which notice shall be published at least thirty days prior to the time fixed for the application as aforesaid. The court may adjourn the proceedings from time to time, shall direct any future notice thereof to be given that may seem proper, shall have proofs and allegations of all parties interested touching the regularity of the proceedings, and shall[6] by an entry in its minutes, appoint three disinterested appraisers[7] as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpœnas and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall hear the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested, for the lands, real estate or claims to be taken or affected, as well as all damages accruing to the owners or parties interested, in consequence of the condemnation of the same, taken or injuriously affected as aforesaid, making such deduction or allowance for real benefits or advantages which such owners or parties interested may derive from the construction of said road, railroad, ditch, telegraph or flume.[8] They, or a majority of them, shall make, subscribe and file with the clerk of the county in which such lands, real estate or claims shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate

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(6) In hearing the application and in making the appointment, the court acts in a ministerial and not in a judicial capacity. *Ibid.: I. C. R. R. Co.* v. *Rucker*, 14 Ill. 153.

There is no discretion in the court to refuse the appointment, where such a case is made as is required by the statute. *Idem.*

(7) The appraisers are *quasi* jurors, and must be free from all legal disability. *Rock Island and Alton R. R. Co.* v. *Lynch*, 22 Ill. 645.

(8) The appraisers are to take into account the probable benefits which will accrue to the landowner from the *construction* of the work, and not from its *location*. *The State* v. *Evans*, 2 Scam. 209. *The State* v. *Wilson*, 2 Scam. 225.

or claims shall be described with convenient certainty and accuracy. The probate judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place for that purpose, approved by the court, shall make and cause to be entered in its minutes, a rule, describing such lands, real estate or claims in manner aforesaid, such ascertainment of compensation with the mode of making it, and each payment or deposit of the compensation as aforesaid; a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of such rule, the said corporation shall become seized in fee, or shall have the exclusive right, title and possession of all such lands, real estate or claims described in said rule, as required to be taken as aforesaid, during the continuance of the corporation, and may take possession of and hold and use the same for the purposes of said road, railroad, ditch, telegraph or flume, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate, or rule of said probate judge. If at any time after an attempted or actual ascertainment of compensation under this article, or any purchase by or donation to said corporation, of lands or claims for purposes aforesaid, it shall appear that the title acquired thereby, to all or any part of such lands for the use of said corporation, or if said assessment shall fail or be deemed defective, the said corporation may proceed and perfect such title by procuring an ascertainment of the compensation proper to be made to any person who has title, claim or interest in, or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this article, the probate judge may, by rule in that behalf made, authorize the said corporation, if already in possession, and if not in possession, to take possession of and use said premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation on account thereof: *Provided*, Such corpororation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained, and in every case where possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said appraisers shall receive two dollars per day, as compensation for each day actually employed, such compensation to be taxed and allowed by the probate judge. If any appraiser so appointed shall die, be unable or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the probate judge. Applications may be made to the district court in the same manner as herein provided, and the district court may thereupon cause such proceedings to be had and taken in like manner, and with the same effect as herein required respecting the probate court.

SEC. 49. Whenever any corporation constituted or formed for the purpose of constructing a wagon-road, according to the provisions of this article, shall have constructed one mile or more of the road by such corporation to be constructed, it shall be lawful for the county commissioners or the tribunal transacting county business of the county in which the portion of road so constructed shall lie, to prescribe the rates of toll to be charged and collected by such corporation, upon the portion of the road so constructed, and thereafter; and as other portions of the road to be constructed by such corporation shall be completed, such county commissioners or tribunal transacting county business, shall prescribe rates of toll to be charged and collected upon other portions of the road so completed as aforesaid, and such corporation shall have power to erect toll-gates, not exceeding one to every ten miles, and to collect tolls thereat, at the rates prescribed, as aforesaid, until such road be completed: *Provided*, Said road shall be completed within two years after such rates shall have been prescribed.

SEC. 50. Whenever any corporate body, organized under this article, shall have fully completed the wagon-road to be by them constructed, and the county commissioners, or tribunal transacting county business of the county in which the same shall be located, shall have prescribed the rates of toll to be charged and collected upon such road, such corporation shall be entitled to charge and collect toll at the rates so prescribed, for two years thence next ensuing; and at the expiration of the term of two years after such rates shall be prescribed, and biennially thereafter, during the existence of such corporation, the county commissioners, or tribunal transacting county business, shall prescribe the rates of toll to be charged and collected on such road for the two years thence next ensuing.

SEC. 51. Whenever any wagon-road, constructed by any corporation organized under this article, shall be located in two or more counties it shall be lawful for the county commissioners or tribunal transacting county business of the several counties into or through which such road shall pass, to prescribe the rates of toll to be charged and collected by such corporation, on the portions or parts of such road lying within the limits of such counties, respectively.

An act relating to Railroads, Wagon-roads and Mining Companies, Subscriptions to Stock, Issue of Bonds, Taxes to pay Interest and Principal by Counties, Cities or Towns, and for other purposes.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 52. (I.) It shall be lawful for the board of county commissioners of any county, or the mayor of any city or town in this territory or state, as may be, to subscribe in the corporate name of such county, city or town, to the capital stock of any organized railroad or wagon-road company located in this territory or state, and to issue bonds in payment therefor under the hands and seals of said commissioners or mayor on the faith and credit of such county, city or town, to the amount specified in such subscription, payable as required in such sums, time and place, as said commissioners or mayor deem expedient, bearing eight per cent. interest per annum, with interest coupons attached to such bonds, payable annually; the proceeds of such bonds to be applied in aid of construction of such railroad or wagon-road; said bonds or stock may be sold at such rates, above or below par, as may be necessary to negotiate them; said bonds may be purchased at the market rates if so required to liquidate or redeem them; said bonds may be made convertible into said stock, or said stock may be converted into such bonds if deemed expedient, by said commissioners or mayor.

SEC. 53. (II.) No such bonds shall be issued unless application in writing be made to the county commissioners of any county or the mayor of any city or town in this territory or state, of at least one hundred voters of such county, city or town, for the approval of subscription to stock and issue of bonds, by the legal voters of such county, city or town, then it shall be the duty of said commissioners or mayor, within ten days after such application, to call a meeting or election of the legal voters of such county, city or town, to approve and vote the subscription of stock and authorize the issue of bonds; public notice of such election shall be given thirty days prior to the day of such election in any newspaper published in such county, city or town; if no newspaper is published there, notice shall be posted at least thirty days prior to such election, at the usual places of holding elections in each precinct in such county, city or town; such election shall be held, conducted, and the votes returned and canvassed according to the laws then regulating elections; if upon canvassing the votes cast at any such election, it shall be found that a majority of all the votes cast are in favor of such subscription of stock and issue of such bonds, then such stock and bonds shall be issued accordingly; whenever said commissioners or mayor may deem it expedient to sell or transfer such stock in liquidation and redeem such bonds, the same approval of the legal voters shall be had, and proceedings as aforesaid, and the proceeds of sale of such stock shall be exclusively applied to purchase, liquidate or redeem such bonds and interest thereon.

SEC. 54. (III.) Whenever any county, city or town issue bonds under this act, it shall be the duty of said commissioners or mayor, or municipal authorities or assessors of any such county, city or town, to duly levy, and assess a special tax annually upon the taxable property in such county, city or town, in amount sufficient to pay the interest coupons, when and where due, upon all such bonds, and for the proper expenses of collecting, remitting and disbursing such funds; and after ten years from date and issue of any such bonds, said counties, cities or towns shall provide by taxation, and pay at least five per cent. of the principal or amount of such bonds, annually thereafter until the full amount of such bonds have been paid, purchased or redeemed, and all the interest thereon due; the taxes so levied or assessed shall be collected as other taxes and the proceeds remitted and paid to the treasurer of this territory or state, as custodian of such funds, but shall only and exclusively be applied to the payment of interest and principal, or purchase of such bonds by him, and for the expenses thereof; the redemption or purchase of such bonds may be done when authorized by said commissioners or mayor of the counties, cities or towns issuing such bonds; the treasurer shall be paid a reasonable compensation for such service in the payments, purchase or redemption, from the proceeds of taxes, or otherwise.

SEC. 55. (IV.) Whenever counties, cities or towns in the territory or state shall issue bonds under this act, all such bonds shall previous to being delivered or negotiated, be presented by said commissioners and mayor to the auditor of this territory or state, to be duly registered under his direction in a book kept for that purpose in his office, stating the county or city, date, amount, number, time and place of payment, and rate of interest; the auditor shall receive one dollar for registering and certifying or cancelling each of said bonds, to be paid by said commissioners or mayor; it shall be the duty of the auditor to include the sums due or to be paid on such bonds in his report for taxation in such counties, cities or towns, and the amount of funds received and paid on account of such taxes and payments of such bonds, as required by him in his duties to the general assembly. In cases of delay or neglect of any county, city or town officers to levy, assess or collect and remit the taxes herein provided for to the treasurer of the territory or state, in time to meet such interests or payments of principal and purchase of bonds, any such officer shall be liable to a fine of not less than five hundred dollars for each offence, to be paid to such bondholder as may sue for same; and the treasurer and auditor may appoint proper agents to collect and remit such taxes. Any such bonds that may be purchased or fully paid, shall be so recorded and cancelled; all such bonds shall state on their faces that they are duly issued under this act; and the provisions of this act relating to them shall be printed on the back of such bonds, and the certificate of the auditor shall be evidence of their legal issue.

SEC. 56. (V.) The capital stock of any such railroad or wagon-road company shall be divided into shares of one hundred dollars each; such shares shall be regarded as personal property, and be subject to sale and execution at law, and transferred as provided in the by-laws of such company. The shares of stock in any such company shall be liable to assessment, as the directors of such company may order, not exceeding ten per cent. of each share monthly; and such stock shall not be voted on, in person or by proxy, unless all assessments due are paid. If any instalment or assessment of stock shall remain unpaid for sixty days after the time it may be due or specified in the call ordered by the directors, whether such stock is held by the original subscriber, or by assignee or transferee, the same may be collected by action of debt; the directors or treasurer may at their option serve upon such delinquent stockholders if resident of this territory, a note of thirty days' notice in writing, or in case he may not be a resident or not found, publish in some newspaper printed in this territory or state, a like notice that such instalment is due and unpaid; and if said instalment on such stock shall not be paid within thirty days after expiration of such notice, and all charges and expenses in the proceedings herein prescribed, be paid to the treasurer; then such stock, and all the right, title and interest of such subscriber, assignee or transferee therein, by virtue of such failure, and without further action by said company, shall become forfeited, and may be disposed of or sold, as deemed expedient, and the balance due on said stock may be recovered by action of debt in any district court in this territory or state, or other states. The stockholders of any company may at any duly called meeting, determine the amount of stock to be issued, which shall not exceed the cost and equipment of such railroad; and may reduce the capital stock of any such company, if deemed expedient, and return and cancel same, to the amount that may be determined by a vote of the stockholders at any meeting duly held and voted on therein.

SEC. 57. (VI.) That any railroad company in this territory or state accepting the provisions of this act and filing such acceptance with the secretary of this state or territory, may be and they hereby are authorized and empowered to make any running, traffic or business arrangement with any other railroad company, may connect with any railroad at any point of their respective lines or routes, by proper switches or turnouts, as may be agreed upon by them; may unite their capital stock, and may apply any amount of their capital stock to any specified section of their railroad or wagon-road, as may be determined by the stockholders at any meeting; may consolidate their stock with any railroad company in this territory or state, or in any adjoining territory or state; may elect at any meeting of the stockholders of such company or companies if not less than seven nor more than thirteen directors, as may be determined at such meeting; may change or assume such corporate title as may be determined at any meeting duly held and then acted on therein, which is hereby granted as the duly organized company and legally existing for all purposes whatever; may transfer any existing or other subscriptions of stock in such companies and the authorized issue of bonds by any county, city or town, which shall be binding and legal on such counties, cities or towns, as if no consolidation of such companies or change in corporate title were made; the filing of such acts and proceedings under the hands and seals of the officers of such companies with secretary of this territory or state, would be evidence of such acts and proceedings under the provisions of this act, and the certificate of the secretary of this territory or state shall be deemed *prima facie* evidence of such organization and proceedings and legally binding and in force for all purposes herein mentioned.

SEC. 58. (VII.) This act and the provisions thereof are intended to aid and promote the mining, manufacturing and industrial interests of this territory or state, and for its public improvements; and may be made available for such purposes to any companies who may accept it and file such acceptance with the secretary of this territory or state.

SEC. 59. (VIII.) The provisions of this act shall not apply to any railroad company now organized, or that may hereafter be organized in this territory, unless an acceptance of the same shall first be filed by said railroad company with the secretary of the territory, nor shall its provisions in any way interfere with or apply to any proceedings taken for issuing county bonds, or for making county subscriptions to the capital stock of any railroad company taken or made between the first day of December 1867, and the first of February 1868.

SEC. 60. (IX.) This act shall take effect from and after its passage.

An act to amend an act to enable Road, Ditch, Manufacturing and other Companies to become bodies corporate, and the several acts amendatory thereto.

[*Approved December* 27, 1867.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 61. (I.) That any railroad company that may have been or may hereafter be organized under the provisions of the act to enable road, ditch, manufacturing and other companies to become bodies corporate and the several acts amendatory thereto, shall have the power to lease the road of said company with all its machinery, depot and depot grounds, and all other appliances and property necessary to the successful operation and maintenance thereof, to any other railroad company or responsible parties, on such terms and for such length of time as shall be agreed upon by the trustees of said railroad company; or to consolidate said company with any other railroad company, provided, that the consummation of such lease or consolidation shall not take effect until after the terms and conditions thereof shall have been approved by a vote of a two thirds majority of the stock of said company, at a stockholders' meeting to be called for the purpose by the trustees of the company, of which meeting at least thirty days' notice shall be given to each stockholder by a note to his address being deposited in the post-office and by publication in one or more newspapers published at the place in the territory where said company has its principal place of business; and if the votes of a two thirds majority of the shares of the stock of said company shall be in favor of such lease or consolidation the same shall be held to be ratified and confirmed.

SEC. 62. (II.) That all such railroad companies shall have the power and authority to borrow money for the purpose of aiding in the construction, operation and maintenance of their road at such rates of interest as shall be agreed upon by the trustees of said company, not exceeding ten per centum per annum, and to execute a trust deed or mortgage in their discretion upon the road of said company, its depots, depot grounds, rolling stock, which shall be considered realty, and such other property or lands as it shall be lawfully possessed of, with power of sale, to secure the payment of such loan or loans.

SEC. 63. (III.) That all such railroad companies shall have the power to accept donations of lots and lands for the purposes of right of way, depot grounds, or to be disposed of and conveyed in their discretion to aid in the construction, operation or maintenance of their road; and when in pursuance of the provisions of the acts to which this act is amendatory and supplementary, any such railroad company shall acquire by condemnation any land for right of way or depot grounds, the right and title to said lands shall be and remain in said company, their successors or assigns, so long as they shall be held and used for the purposes for which they were acquired.

SEC. 64. (IV.) It shall be lawful for the board of county commissioners of any county in this territory within the bounds of which any part of the road of any such railroad company shall be located, to subscribe to the capital stock of said company and issue the bonds of said county in payment for said stock, bearing not to exceed eight per cent. per annum interest, to run for such length of time as shall be ordered by said board of county commissioners: *Provided*, That said subscription shall be approved by the legal voters of said county at an election to be called by said commissioners for the purpose, public notice of which shall be published at least three weeks prior to the day of such election in all newspapers published in said county; or in case no such paper is published in said county, said notice shall be posted at the usual place of holding elections in each election precinct in said county at least three weeks prior to said election. Such election shall be held, conducted, and the vote returned and canvassed according to the laws of the territory regulating elections. And if upon the canvass of the votes cast at any such election, it shall be found that a majority of all the votes cast are in favor of said subscription, the county commissioners shall make the same, and issue the bonds of the county in payment therefor.

SEC. 65. (V.) That whenever the county commissioners of any county in this territory shall issue bonds for the payment of any subscription to the capital stock of any such railroad company, it shall be the duty of the county commissioners, or the authority doing county business in said county, annually thereafter, so long as any of said bonds shall be outstanding, to levy upon the taxable property of said county a special tax sufficient in amount to pay the accruing interest on said bonds, which tax shall be collected as other county taxes are by law, and the proceeds thereof shall be paid in liquidation of the interest upon such bonds in the manner, at the time or times and at such place or places as shall be provided for therein; and in case any surplus of said tax shall remain in any year after paying such interest, the same shall be applied to the purchase of the said bonds for cancellation.

SEC. 66. (VI.) The term of existence of all railroad companies shall not exceed fifty years.

An act cancelling County Bonds.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 67. (I.) That when hereafter any county in this territory, agreeably to the provisions of law, shall, prior to the first of February next, vote to issue the bonds of said county to any railroad company in payment of its subscription to the capital stock of said company, it shall be the duty of the county commissioners of such county before issuing said bonds, to cause them to be numbered and registered on the records of said county in a book to be provided for the purpose, and when said bonds or any of them shall be purchased for cancellation, the same shall be returned to the county clerk who shall enter on said registry the fact of said cancellation, and when the interest coupons shall be paid and cancelled, said cancelled coupons shall in like manner be returned to the county clerk, who shall note the same on said registry.

SEC. 68. (II.) That when any such bonds shall be issued, it shall be the duty of the county commissioners of said county, or the authority doing county business in and for said county, after the expiration of ten years from the date of said bonds and annually thereafter in addition to the special tax provided to be levied for the payment of the interest thereon, to levy an amount sufficient to pay five per cent. of the principal of said bonds, which sum when collected in like manner, said interest tax shall be applied by the county treasurer to the purchase for cancellation of said bonds, and it shall be the duty of the county treasurer to remit annually to such agent as the county commissioners may designate, the amount of moneys collected for the payment of said interest, which agent shall report the payment made with the cancelled interest coupons to the county clerk for registry, and the county treasurer shall report to the county clerk annually the amount of funds received and disbursed on account of the payment of principal and interest on said bonds.

SEC. 69. (III.) The county commissioners shall annually cause to be published, and it shall be the duty of the county clerk annually to publish in the newspaper having the largest circulation, published in said county, a full report of the amount of bonds outstanding; the amount of interest paid and due thereon, and the amount and numbers of the bonds that shall have been purchased and cancelled.

SEC. 70. (IV.) This act shall take effect and be in force from and after its passage.

An act amendatory of an act entitled an act to amend an act entitled an act to enable Road, Ditch and other Manufacturing Companies to become bodies corporate.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 71. (I.) That in all cases where, under the provisions of the act to which this act is amendatory and the several acts amendatory of the same, any persons shall be incorporated for the purpose of manufacturing illuminating gas for the supply of the inhabitants of any incorporated city and lighting the streets thereof, the mayor and city council of such incorporated city are hereby empowered to authorize such incorporated company to excavate so much of the streets of said city as may be necessary to lay down street-pipes for conducting illuminating gas, as well as for the repairs of said street-pipes from time to time, under such regulations as said mayor and city council may deem adequate for the prevention of injury to persons or property.

SEC. 72. (II.) It shall be lawful for any corporation whose object shall be to supply illuminating gas to any city or the inhabitants thereof, to lease, purchase, hold and convey such coal lands within this territory as said corporation may deem necessary, for the purpose of supplying their works with coal for the manufacture aforesaid; and said corporation shall also have power and is hereby authorized to sell coal known as coke, or the coal from which the illuminating gas shall have been extracted, as well as other coal from the company's mines on their said lands.

SEC. 73. (III.) Any corporation which shall expend the sum of fifty thousand dollars in money within eighteen months after the date of the certificate of incorporation in the purchase of an eligible sight for the company's works, and for the purchase of conducting pipes and other necessary apparatus, and for labor in and about the construction of said works, exclusive of salary of officers; such corporation shall have the exclusive right and privilege of supplying said city and the residents and inhabitants thereof with illuminating gas during the period of the legal existence of said corporation: *Provided*, That it shall not be lawful for such company to charge or collect from said city or the inhabitants thereof, a greater sum of money than six dollars for each and every one thousand cubic feet of gas sold and delivered by said corporation for the term of ten years from and after the date of the certificate of incorporation; and for and during the next succeeding term of ten years a sum of money not greater than five dollars for each and every one thousand cubic feet of gas sold and delivered; and for and during the residue of the term of existence of said corporation, a sum of money not greater than four dollars for each and every one thousand cubic feet of gas sold and delivered; and *Provided further*, That said company shall, within two years from the date of the certificate of incorporation, lay down in the streets of said city at least two miles of street-pipes for the supply of illuminating gas to said city and the inhabitants therein.

SEC. 74. (IV.) Whenever any such corporation shall not within one year after the date of the certificate of incorporation commence to erect their works for the manufacture of gas, and within said first year shall not expend in money at least the sum of twenty thousand dollars in the purchase of an eligible site for the erection of said company's works, and also for the purchase of street-pipes and other necessary apparatus, and for work and labor done in and about the erection of works for the manufacture of gas, exclusive of salaries to officers of said corporation, the said corporation shall thereupon be deemed to be dissolved, and the corporate existence of said company immediately cease and determine.

SEC. 75. (V.) For the purpose of ascertaining whether or not any corporation created under the act to which this act is amendatory and the several acts amendatory thereto, and also under the foregoing provisions of this act, shall have in good faith laid out and expended the sum of fifty thousand dollars, as is provided in section three of this act, or the sum of twenty thousand dollars, as is provided in section four of this act, the trustees of said corporation shall report in detail the items of expenditure to the mayor and city council, which items shall be taken from the books of said corporation, and shall be verified by the oaths of one or more of said trustees; and a failure to make report as above provided, showing an expenditure of the sum of fifty thousand dollars in good faith, with necessary vouchers, if called for by the mayor and city council, within eighteen months after the date of the certificate of incorporation, shall be held and deemed to work a forfeiture of the exclusive right and privilege mentioned in section three of this act; and a failure to make such report as above provided, showing an expenditure of the sum of twenty thousand dollars in like good faith, with necessary vouchers, if called for by the mayor and city council, within one year next ensuing the date of the certificate of incorporation, shall be held and deemed to work a forfeiture of all rights and privileges under said certificate of incorporation, and the said corporation shall thereupon be dissolved and immediately cease and determine.

SEC. 76. (VI.) The mayor and city council, after the period of two years from the date of the certificate of incorporation, may require, by resolution or ordinance, said corporation to extend the line of street-pipes, for conducting gas to the inhabitants of said city, a distance not exceeding two miles, in addition to the two miles hereinbefore required to be laid down through such streets as said mayor and city council may designate, having regard to the accommodation of the greatest number of householders in the selection of the streets so to be designated; and the said company shall, within one year after notice of the resolution or ordinance, complete the said line of extension for the distance of two miles as aforesaid; and a failure to complete the said extension according to the terms of the resolution or ordinance aforesaid, shall authorize and empower the mayor and city council to reduce the price to be charged and collected by said corporation for each one thousand cubic feet of gas sold and delivered, to the sum of five dollars after the expiration of three years from and after the date of the certificate of incorporation, anything in the provisions of this act to the contrary notwithstanding: *Provided, however*, That nothing in this section shall be construed to authorize the charge or collection of more than four dollars for each and every one thousand cubic feet of gas sold and delivered, as hereinbefore provided, after the term of twenty years from and after the date of the certificate of incorporation.

SEC. 77. (VII.) The term of existence of every corporation authorized to be created for the purpose of manufacturing illuminating gas, shall not exceed thirty years.

ARTICLE II. RELIGIOUS AND BENEVOLENT SOCIETIES, LIBRARIES, COLLEGES, ACADEMIES, FIRE AND MILITARY COMPANIES.

SECTION 1. Any number of persons, not less than three, may associate themselves together in the manner hereinafter mentioned, for any of the following purposes:

First. For the support of the gospel, or the maintenance of religious worship.

Second. To maintain, hold and keep in repair a house of public worship, with or without a parsonage house appurtenant thereto.

Third. To provide, hold, maintain and keep in repair a place or places for the burial of the dead. The same persons may unite in one association for one or more or all of the purposes above-mentioned.

Fourth. To establish and maintain a library, or a cabinet of mineralogical or metallurgical specimens, or relating to any other science.

Fifth. To establish and maintain a college, academy or other like institution for the education of youth.

Sixth. To promote the diffusion of useful information by other means than above enumerated.

Seventh. For the mutual assistance of the members of such society in time of sickness or necessity, and to provide a fund for this purpose by gratuitous contributions of the members thereof from time to time, and for the like incidental benevolent purposes.

Eighth. To establish and maintain hospitals and infirmaries for the cure of the sick.

Ninth. To establish and maintain lodges and chapters of the societies commonly known as the independent order of odd-fellows, free masons, good templars, and other like benevolent societies.

Tenth. To establish and maintain fire-companies in any incorporated city or town.

Eleventh. To establish and maintain independent companies and regiments of military.

Twelfth. To establish and maintain societies for the preservation of the history and antiquities of this country, or any part thereof.

All such persons so desiring to associate themselves for any of the foregoing purposes, shall make, sign, acknowledge, and cause to be filed and recorded in the same manner as provided in the first section of article one of this chapter, duplicate certificates setting forth the name by which they have associated themselves, the purpose for which the association is formed, the number of the trustees and the names of the trustees who shall manage the affairs of the association during the first year, or until the next annual election, the place at which the corporation will carry on its business, or pursue the purpose for which it is formed, and the duration of such corporation which may be perpetual.

SEC. 2. Upon the filing of such certificate, the persons therein named, their associates, successors and assigns, shall be and become a body corporate and politic by the name in such certificates mentioned, and its existence, powers and purposes may be proven in like manner as in the case of other corporations, as provided in article one of this chapter.

SEC. 3. Every such corporation shall have power to sue and be sued, plead and be impleaded, in all courts of law and equity whatsoever; to have and use a common seal, and alter the same at pleasure; to contract and be contracted with in pursuance of the powers of such corporation, to purchase or receive by gift or otherwise, personal estate, such as may be necessary or proper for the purposes of such corporation, and to dispose of the same, to purchase or receive by gift, grant, devise or otherwise, real estate, such as may be necessary or proper for the purposes of the corporation, but not exceeding as follows: corporations formed for any of the purposes specified in the first, second, third, seventh, eighth and ninth subdivisions of the first section, not exceeding fifty thousand dollars in value. Corporations formed for the purposes named in the fifth and sixth subdivisions of the first section of this article, not exceeding one hundred thousand dollars in value. Corporations formed for any of the purposes named in the ninth subdivision of the first section, not exceeding fifty thousand dollars in value. Corporations formed for the purposes named in the tenth and eleventh subdivisions of section one, not exceeding ten thousand dollars in value.

SEC. 4. The members of every such corporation shall have power when organized to adopt by-laws for the following purposes: to regulate the time and places of holding their meetings, and the manner of calling special meetings, to regulate the management of the affairs and property of such corporation, to regulate the number of trustees and the other officers of the corporation, and their powers and duties, to regulate the qualifications, choice, powers and duties of the servants, teachers and employes of such corporations, to prescribe the qualifications of persons desiring admission to such corporation, the manner of the admission of new members, and the discharge or expulsion of members, to provide for the manner of forfeiting or selling of the shares in such corporation of any member failing to pay any assessment thereon, and all other by-laws and regulations necessary in promoting the objects and purposes of such corporation, so that the same be not inconsistent with the organic act and laws of this territory, or the articles of association of such corporation.

SEC. 5. Any such corporation shall have power to raise money for the purposes of the corporation in such manner as may be agreed upon by the articles of association or their by-laws.

SEC. 6. Any such corporation may by their articles of association or by-laws, divide their stock and property into shares, and determine the terms upon which such shares of stock shall be held by the members, and the manner in which the same shall be sold and transferred.

SEC. 7. Where the stock and common property of any such corporation shall be so divided into shares, any such corporation or the trustees thereof as the by-laws may provide, may at any meeting called for the purpose, raise money for the purposes of the corporation by assessment upon the shares of such stock; and the payment of such assessment may be enforced by sale or forfeiture of the shares of such stock as the by-laws may provide, but no other estate or property of any stockholder shall be liable to be seized or sold on execution or otherwise, for the non-payment of any assessment.

SEC. 8. No dividend shall be declared or paid upon the stock of any such corporation, until the final dissolution thereof.

SEC. 9. No officer of any corporation formed under the provisions of the first, second, third, fifth, seventh, eighth and ninth subdivisions of section one of this article, shall receive any salary or remuneration from such corporation for his services as such officer, nor shall any such officer enter into any contract with the corporation during the time of his remaining in office.

SEC. 10. The board of trustees of any religious society formed under the provisions of the first subdivision of section one of this article, shall have and exercise such powers as are or may be conferred upon them by the by-laws of such corporation, according to the usage and discipline of such society in their temporal affairs.

SEC. 11. The board of trustees of any corporation formed for the purposes mentioned in the fifth subdivision of section one of this article, shall have power to prescribe reasonable by-laws for the government of the youth attending at the institution of learning maintained by such corporation, and to confer such degrees and diplomas as are usually conferred by like institutions.

SEC. 12. Corporations formed under the provisions of the eleventh subdivision of said first section, shall have power to impose by their by-laws, pecuniary fines not exceeding one hundred dollars in any case, for the breach of any by-law or military regulation of such corporation, and all such fines may be reversed by action before any justice of the peace of the county wherein the head-quarters of such military company or regiment are.

Every military company and regiment organized under the provisions of said section, shall at all times be subject to the command of the governor of the territory.

SEC. 13. This article may be at any time repealed, altered or amended by the legislature, and corporations formed under the provisions hereof shall be subject to such regulations and alterations as the legislature may hereafter make.

An act concerning the Incorporation of the North American Turner Union.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 14. (I.) Any number of persons, not less than seven, may associate themselves together for mental and physical improvement in accordance with rules, discipline and regulations of the North American Turner Union, otherwise called the

North American Turner Bund, and as a part of said union in manner hereinafter provided.

SEC. 15: (II.) The persons desiring to become so associated shall file in the office of the secretary of the territory, and the office of the county clerk of the county in which said turner association shall be located, a certificate in writing setting forth the name of such body, together with the place where the same shall be located and their meetings held, the number of the trustees, and the names of those who shall manage their affairs during the time which shall elapse until the next election of trustees, according to the regulations of said association, which certificate shall be signed by all persons so desiring to become associated, and said association having filed the certificate received by this act, they and their associates and successors forever shall be deemed and held a body corporate and politic under the name and style stated in such certificate, and may sue and be sued in all courts of record in this territory, and shall have power to contract and be contracted with, and use a common seal.

SEC. 16. (III.) That any turner association incorporated under this act, may take by purchase, grant, devise, gift or otherwise, any town lot or lots, or other tracts of land, may sell and dispose of the same and execute deeds of conveyance signed by the trustees of the association, when authorized by a majority vote of all the members of said body, attested by the seal of the association.

SEC. 17. (IV.) Any such turner association organized under the provisions of this act, may make all needful by-laws and regulations necessary to carry out the provisions of this act and the purpose of such association, not inconsistent with the laws and regulations of the North American Turner Union, under which the same may be holden, and not inconsistent with the constitution of the United States and the organic act and laws of this territory; they may by such by-laws fix the conditions upon which others shall be admitted to such association, and provide for the dismissal and removal of any member violating any by-laws or regulation of such association, or of the North American Turner Union.

SEC. 18. (V.) Any such turner association may hold and possess personal property, and sell and dispose of the same.

SEC. 19. (VI.) If at any time the members of said turner association so incorporated under this act, wish to dissolve such corporation, they may do so, providing they have not more than seven members; the presiding officer, secretary and treasurer of such body shall file a certificate of such dissolution with the secretary of the territory, and with the county clerk of the county in which such body is located, and the filing of such certificate shall be held and deemed to dissolve such corporation, but shall not affect any suit which may be pending against such corporation, nor deprive any person or persons of the right of action against such association in any cause of action existing at the time of such association.

SEC. 20. (VII.) Provided the capital stock in such association shall never exceed one million of dollars, and this charter shall not extend beyond ninety-nine years.

SEC. 21. (VIII.) This act shall take effect and be in force from and after its passage.

An act concerning the Incorporation of Masonic and Odd-Fellows' Societies.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 22. (I.). That any number of persons not less than seven may voluntarily associate themselves together for either of the following purposes: to organize masonic lodges, royal arch chapters, commanderies of knights templar, councils of royal and select masters, lodges of perfection, councils of princes of Jerusalem, chapters of rose croix, consistories of princes of the royal secret, subject to the regulations of their respective grand bodies, according to the constitutions and usage of said masonic fraternity.

SEC. 23. (II.) Any such masonic body that may wish to become incorporated under and by virtue of this act, shall file in the office of the secretary of the territory and the office of the county clerk of the county in which said masonic body shall be located, a certificate in writing, setting forth the name of such masonic body, together with its number (according to masonic usage), the place where the same shall be held, which certificate shall be signed by the presiding officer and secretary, and attested by the seal of such masonic body. And such masonic body or association having filed the certificate required by this act, shall be deemed and held a body corporate and politic, under the name and style stated in such certificate, and may sue and be sued in all courts of record in this territory, and shall have power to contract and be contracted with, and use a common seal.

SEC. 24. (III.) That any masonic body incorporated under this act may take by purchase, grant, devise, gift or otherwise, any town lot or tract of land; may sell and dispose of the same, and execute deeds of conveyance, signed by the presiding officer, secretary and treasurer, when authorized by a majority vote of all the members of said body, or by any person the said masonic body may by a majority vote of its members designate, attested by the seal of such body.

SEC. 25. (IV.) Any such masonic body organized under the provisions of this act may make all needful by-laws and regulations necessary to carry out the provisions of this act and not inconsistent with the laws and regulations of such bodies or their respective grand bodies under which the same may be holden, and not inconsistent with the constitution of the United States and organic act and laws of this territory.

SEC. 26. (V.) Any such masonic body may hold and possess personal property, and sell and dispose of the same.

SEC. 27. (VI.) If at any time the members of the said masonic bodies so incorporated under this act, wish to dissolve such corporations, they may do so by a majority vote of its members, and the presiding officer, secretary and treasurer of such body shall file a certificate of such dissolution with the secretary of the territory and with the county clerk of the county where such body is located; and the filing of such certificate shall be held and deemed to dissolve such corporation, but shall not affect any suit which may be pending against such corporation, nor deprive any person or persons of the right of action against such masonic body in any cause of action existing at the time of such dissolution.

SEC. 28. (VII.) Any of the foregoing masonic bodies, duly chartered by the respective grand bodies according to the laws, constitutions and usages of the masonic fraternity, and not wishing to become a corporate body under the provisions of this act, may take and hold real estate for their use and benefit, by purchase, grant, devise, gift or otherwise, in and by the name and number of said body, according to the respective registers of the grand body under which the same may be holden; and the presiding officer of such body, together with the secretary thereof, may make conveyances of any real estate belonging to such body when authorized by a majority of all the members of said body under such regulations as the said masonic body or its grand body may see fit to make; but all such conveyances shall be attested by the seal of said subordinate body.

SEC. 29. (VIII.) Should it become necessary at any time to protect the rights of such masonic body in and to the real estate and personal property—said body not being incorporated under this act—the presiding officer thereof may bring suit in his own name, for the benefit of the masonic body over which he presides, in any of the courts of record of this territory having original jurisdiction, and may prosecute or defend the same in the supreme court of the territory.

SEC. 30. (IX.) This act shall be deemed to apply to the independent order of odd-fellows as well as to the masonic fraternity, and any subordinate or grand lodge of odd-fellows in this territory may organize and become a body corporate under the provisions of this act in the same manner as masonic bodies, and may also take, hold and convey property, and do all other acts, and have all the privileges conferred by this act on masonic bodies.

SEC. 31. (X.) This act shall be deemed a public act.

SEC. 32. (XI.) This act shall take effect and be in force from and after its passage.

ARTICLE III. FOREIGN CORPORATIONS.

SECTION 1. Every incorporated company incorporated under the laws of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this territory, and now or hereafter doing business within this territory, shall, within thirty days after commencing so to do business, file in the office of the clerk of the county within which their business is conducted, a copy of their charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law, duly certified and authenticated by the proper authority of such foreign state, kingdom or territory.

SEC. 2. A failure to comply with the provisions of this article shall render each and every officer, agent and stockholder of any such corporation so failing herein, jointly and severally personally liable on any and all contracts of such company made within this territory, during the time that such corporation is so in default.

SEC. 3. The several certificates, statutes and charters mentioned in section first of this article, shall be by the county clerk filed and preserved in his office, as a part of the records thereof; and he shall be entitled to receive a fee of fifty cents for receiving and filing every such certificate and statute. Copies of such charters, statutes and certificates, duly certified by such county clerk, under his seal of office, shall be received in all courts of this territory as sufficient evidence of the corporate character of such incorporations, and of all their powers, duties and liabilities, and the orignals thereof may in like manner be used in evidence of these matters with like effect.

ARTICLE IV. OF THE DISSOLUTION OF CORPORATIONS.

SECTION 1. Upon dissolution by expiration of its charter or otherwise, if any corporation now existing or which may hereafter be formed, unless some other person or persons be appointed by the legislature or some court of competent jurisdiction, the board of trustees or directors of such corporation, or the managers of the corporate affairs by whatever name known, acting last before the time of their dissolution, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, to sue for and collect the debts and moneys due to the corporation, or to compound and settle any thereof, as they may deem best; to have, hold, reserve, sell and dispose of property real and personal of every such corporation dissolved, to adjust and pay all the debts of the corporation dissolved, to divide the residue of the moneys and property belonging to the corporation dissolved, after payment of debts and the necessary and reasonable expenses, among the stockholders holding stock in such corporation, in proportion to the amount of stock of each stockholder paid up. All such trustees shall be jointly and severally liable to the creditors and stockholders of such corporation dissolved, to the extent of the property and effects which shall come into their hands and possession, or into the hands or possession of any of them.

SEC. 2. The title to all real and personal estate belonging to any such corporation, shall immediately upon the dissolution thereof, unless by a decree of a court of competent jurisdiction declaring such dissolution, it is otherwise ordered, pass to and rest in such trustees, directors or other managers, and an action at law may be maintained by such trustees or directors, or the survivors of them, in their own names by the style of the trustees of such corporation dissolved, naming it, for the recovery of all such property or of any damage done to the same, or for the recovery of any debts due such corporation dissolved.

SEC. 3. No suit or action at law or in chancery whereto any corporation is or may be a party, shall abate by reason of the dissolution of such corporation by expiration of its charter of incorporation or otherwise; but the trustees or directors of such corporation, acting as trustees to the stockholders and creditors after the dissolution as herein provided, or the survivors of them, or the trustee or trustees, receiver or receivers, appointed by the decree of any court of competent jurisdiction, may prosecute or defend such suit or action in the name of the corporation dissolved, notwithstanding the dissolution.

SEC. 4. Any corporation dissolved, may, notwithstanding such dissolution, prosecute an action at law in the corporate name, for the use of the person entitled to receive the proceeds of such suit, upon any cause of action accrued, or which but for such dissolution would have accrued to such corporation in the same manner and with like effect as if such corporation were not dissolved.

SEC. 5. The lien of a judgment or execution at law, or a decree of a court of equity, in favor of or against any corporation, shall not be dissolved or suspended by reason of the dissolution of such corporation, subsequent to the rendition of such judgment or the entry of such decree, or the issuing of such execution; but execution may be had thereof in the same manner as if such dissolution had not occurred.

SEC. 6. No execution shall issue upon judgment at law, rendered against any corporation subsequent to the dissolution of such corporation, but the same with the costs thereof shall be paid by the trustees as other debts.

SEC. 7. Nothing in this article contained shall be construed to impair the jurisdiction of the court of chancery to decree the dissolution of any corporation, or to appoint a receiver or receivers, trustee or trustees, to settle the affairs of any corporations dissolved by lapse of time or otherwise, and all trustees or managers of any corporation, acting as the trustees of the stockholders and creditors thereof, after the dissolution of the corporation, shall in all things be subject to the control of the court of chancery; may be required to give bond with security, to be approved by the court, upon petition of any stockholder or creditor of the corporation dissolved, conditioned for the due discharge of their trust; may be required to account for the proceeds of the property and effects of the corporation, and for any failure to give such bond or render such account, or for any default or neglect of duty, they or any of them may be removed by the court, and a successor or successors appointed.

Prior Statutes Repealed. An act to enable Road, Ditch, Manufacturing and other Companies to become bodies corporate. Approved August 15, 1862. Laws 1862, p. 44.

An act to amend an act to enable Road, Ditch, Manufacturing and other Companies to become bodies corporate. Approved March 11, 1864. Laws 1864, p. 49.

An act to amend an act entitled an act to amend an act to enable Road, Ditch, Manufacturing and other Companies to become bodies corporate. Approved February 8, 1865. Laws 1865, p. 47.

CHAPTER XIX.

COSTS.

SECTION
1. Bond for costs required in certain cases; form of bond.
2. Action commenced without bond for costs, when required by law, to be dismissed; plaintiff may be required to give security for costs, after suit commenced, when insolvent or non-resident.
3. Court may allow poor person to sue without payment of costs.

SECTION
4. Plaintiff recovering judgment, to have judgment for costs.
5. If plaintiff be non-prossed or nonsuit, or verdict pass against him, defendant to recover costs.
6. Defendant in replevin making justification or cognizance, if plaintiff be non-prossed nonsuited or suffer discontinuance, or be otherwise barred, recovers costs.

SECTION
7. Costs on judgment on demurrer.
8. Costs when several pleas pleaded.
9. Costs when plaintiff declares in several counts.
10. One of several defendants acquitted in action *ex delicto* recovers costs.
11. Costs upon writ of *scire facias* or prohibition.
12. No more than fees of four witnesses to be taxed in district court, except upon certificate of the court.
13. In actions dismissed for irregularity, etc., defendant recovers his costs.
14. Upon bill dismissed by complainant, or motion of defendant for want of prosecution, defendant recovers full costs; in all other cases in equity, costs in discretion of court.
15. In suits by one to use of another, *cestui que use* liable for costs.
16. Costs on appeals from justices of the peace, or *certiorari*.
17. Cost on appeals from probate court.
18. Costs on dismissal of appeal or writ of error to supreme court.
19. Clerk to tax costs.
20. Party aggrieved by erroneous taxation may have bill of costs corrected; clerk to pay to party aggrieved any unlawful charge.
21. Bill of costs to be made out against party adjudged to pay same, and his security to be paid within thirty days, in default sheriff to levy.

SECTION 1. In all actions on office bonds for the use of any person, actions on the bonds of executors, administrators or guardians, *qui tam* actions on any penal statute,[1] and in all cases in law and equity[2] where the plaintiff, or the person for whose use an action is to be commenced,[3] shall not be a resident of this territory, the person or plaintiff for whose use the action is to be commenced shall, before he institutes such suit file or cause to be filed with the clerk of the court in which the action is to be commenced, an instrument in writing, of some responsible person, being a resident of this territory, to be approved by the clerk, whereby such person shall acknowledge himself bound to pay, or cause to be paid, all costs which may accrue in such action, either to the opposite party or to any of the officers of such court; which instrument may be in form as follows:[4]

A. B. }
vs. } —— Court.
C. D. }

I do hereby enter myself security for costs in this case, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, pursuant to the laws of this territory. Dated this —— day of ——, 18—. ——.

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(1) A prosecution under the ordinances of a municipal corporation is not an action upon a penal statute in such sense as to require a bond for costs to be filed. *Town of Lewiston* v. *Procter*, 23 Ill. 533. *City of Quincy* v. *Ballance*, 30 Ill. 188.

(2) The statute includes a writ of error issued out of the Supreme Court. *Ripley* v. *Morris*, 2 Gilm. 381.

(3) Where, in an action by one person to the use of another, the beneficiary is a non-resident, a bond for costs must be filed before the writ issues. *Smith* v. *Robinson*, 11 Ill. 120.

It is otherwise where a non-resident sues for the use of a resident. *Caton* v. *Harmon*, 1 Scam. 581.

A bond for costs is not required where one of several plaintiffs is a resident, the other being non-residents. *Wood* v. *Goss*, 24 Ill. 627.

In proceedings commenced by attachment a non-resident plaintiff is required to give bond for costs, in addition to the attachment bond. *Casey* v. *Horton*, 36 Ill. 236.

(4) A bond for costs attached to the præcipe for summons, or indorsed upon the declaration, is sufficient, though not fully entitled of both the court and cause. *Linn* v. *Buckingham*, 1 Scam. 452. *Kettelle* v. *Wardell*, 1 Scam. 592.

And if erroneously entitled, or as it seems, in other respects defective, it may be amended. *Hines* v. *Blakesley*, 21 Ill. 509. *Shaw* v. *Haveklutt*, 21 Ill. 127.

SEC. 2. If any such action shall be commenced without filing such instrument of writing, the court on motion, shall dismiss the same,[5] and the attorney for the plaintiff shall pay all costs accruing thereon; and if at any time after the commencement of any suit by a resident of this territory, he shall become non-resident, or if in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court, with respect to their legal demands, it shall be the duty of the court, on motion of the defendant or any officer of the court, to rule the plaintiff, on or before the day in such rule named, to give security for the payment of costs in such suit,[6] if such plaintiff shall neglect or refuse, on or before the day in such rule named, to file such instrument as aforesaid, the court shall on motion, dismiss the suit.

SEC. 3. If any court shall before or after the commencement of any suit be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit and pay the costs and expenses thereof, they may in their discretion permit him to commence and prosecute his action as a poor person; and thereupon such person shall have the necessary writs, process and proceedings, as in other cases, without charge; and if the plaintiff recover judgment, there shall be a judgment for his costs.

SEC. 4. If any person shall sue in any court in this territory in any action, real, personal or mixed, or upon any statute for any offence or wrong immediately personal to the plaintiff, and shall recover any debt or damages in such action, then the plaintiff or demandant shall have judgment to recover against the defendant his costs to be taxed; and the same shall be recovered together with the debt or damages, by execution, except in the cases hereinafter mentioned.

SEC. 5. If any person shall sue in any court of record in this territory, in any action wherein the plaintiff or demandant might have costs in case judgment be given for him, and he be nonprossed, or suffer a discontinuance, or be nonsuited after appearance of the defendant, or a verdict pass against him, then the defendant shall have judgment to recover his costs against the plaintiff, (except against executors or administrators prosecuting in the right of their testator or intestate,) or demandant, to be taxed; and the same shall be recovered of the plaintiff or de-

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(5) The statute is imperative; the court has no discretion to refuse the motion. *Ripley* v. *Morris*, 2 Gilm. 381.

(6) It is discretionary with the court to grant or refuse an application for security for costs. *Gesford* v. *Critzer*, 2 Gilm. 698. *Selby* v. *Hutchinson*, 4 Gilm. 319.

But after a bond has been filed at the commencement of the action, the court cannot require a further security, except upon proof that the pecuniary condition of the security therein has changed since its approval, or that the security is otherwise impaired; and if the plaintiff is required to give further security without such showing, it may be assigned for error. *Ball* v. *Bruce*, 27 Ill. 333.

mandant, by like process as the plaintiff or demandant might have had against the defendant, in case judgment had been given for the plaintiff or demandant.

SEC. 6. Any person making justification or cognizance in replevin, if the same be found for him, or the plaintiff be nonsuited or non-prossed, suffer discontinuance, or be otherwise barred, then such person shall recover his damages and costs against the plaintiff.

SEC. 7. If in any action, judgment upon any demurrer by either party to the action shall be given against the plaintiff, the defendant shall recover costs against the plaintiff; if such judgment be given for the plaintiff, he shall recover costs against the defendant.

SEC. 8. When any defendant in any action, or plaintiff in replevin, shall plead several matters, and any of such matters upon demurrer joined shall be adjudged insufficient, or if a verdict shall be found in any issue of the cause for the plaintiff, costs shall be given at the discretion of the court.

SEC. 9. Where there are several counts in any declaration, and any of them be adjudged insufficient, or a verdict on any issue joined thereon shall be found for the defendant, costs shall be awarded in the discretion of the court.

SEC. 10. Where several persons are made defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover or ejectment, and any one or more of them shall upon trial be acquitted by verdict, every person so acquitted shall recover his costs of suit in like manner as if such verdict or acquittal had been given in favor of the defendant.

SEC. 11. In all suits upon any writ of *scire facias* or upon prohibition, the plaintiff obtaining judgment or an award of excution after plea pleaded or demurrer joined therein, shall recover his costs of suit; if the plaintiff shall be nonsuited or non-prossed or suffer a discontinuance or a verdict shall pass against him, the defendant shall recover his costs.

SEC. 12. In no case in the district court shall the fees of more than four witnesses be taxed against the party against whom judgment shall be given for costs, unless the court shall certify on their minutes that more than four witnesses were really necessary, in which case the clerk shall tax the costs of as many witnesses as the court shall so certify.

SEC. 13. In all cases where any action shall be dismissed for irregularity, or be non-prossed or nonsuited by reason that the plaintiff neglects to prosecute the same, the defendant shall have judgment for his costs.

SEC. 14. Upon the complainant dismissing his bill in equity, or the defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant full costs;

and in all other cases in chancery not otherwise directed by law, it shall be in the discretion of the court to award costs or not.

SEC. 15. When any suit shall be commenced in the name of one person to the use of another, the person to whose use the action is brought shall be held liable and bound for the payment of all costs which the plaintiff may be adjudged or bound to pay, to be recovered by action on the case.

SEC. 16. In all cases of appeal or *certioriari*, upon the judgments of justices of the peace, when the judgment of the justice of the peace shall be wholly affirmed or reversed, the party succeeding shall recover from the opposite party his costs, not only in the district court but before the justice; where the judgment of the justice shall be affirmed in part, then the court shall divide the costs between the parties according to the justice of the case.

SEC. 17. In all cases of appeal from the decision of a court of probate, the costs shall be in the discretion of the court in which such appeal is heard.

SEC. 18. If any person shall sue out a writ of error or take an appeal to the supreme court to review a judgment of the district court, and the same be affirmed, or the writ of error be discontinued or quashed, or the plaintiff in error or appellant be nonsuited, the defendant or appellee shall recover his costs.

SEC. 19. The clerk of any court in the territory is hereby authorized and required to tax and subscribe all bills of costs arising in any cause or proceeding in the court of which he is clerk, agreeable to the rates which shall for the time being be allowed or specified by law.

SEC. 20. If any person shall feel himself aggrieved by the taxation of any bill of costs, he may apply to the court to have the same re-taxed, and if it shall appear that the party aggrieved has paid any higher charge than by law is allowed, the court may order that the clerk shall forfeit all fees allowed to him for taxation, and pay to the party aggrieved the whole amount which he may have paid by reason of the allowing of any unlawful charge.

SEC. 21. The clerk shall make out a tax bill of costs as adjudged to be paid, against the party adjudged to pay the same, and against his security for costs, or other person liable for them, and certify them under the seal of the court, which being delivered to the sheriff of the proper county, he shall demand payment thereon from the person therein charged, and if payment shall not be made within thirty days after such demand, the sheriff shall levy the same on the goods and chattels, lands and tenements, of the person so chargeable, and proceed therein in all things, as on a writ of *fieri facias*.

Prior Statutes Repealed. An act concerning costs. Approved October 24, 1861. Laws 1861, p. 193.

CHAPTER XX.

COUNTIES.

SECTION
1-38. Boundaries of counties defined; county-seats located.
39. No organized county to be taxed to erect buildings in county to which it is attached for judicial purposes.
40. People may locate county seat by vote.
41. Counties hereafter organized, how to locate county seat.
42. County seat may be changed on petition of a majority of legal voters, and upon election held; canvass of votes.
43. Special election held when no place has a majority at first election; if no majority then, vote to be taken at the next general election.
44. County commissioners have power to lay off county-seat, erect jail and other buildings.
45. Boundaries of Lake county.
46. Boundaries of Pueblo county.
47. Boundaries of Huerfano county.
48. Boundaries of Las Animas county.
49. Terms of office of officers of above counties not changed by the foregoing sections.

SECTION 1. The following shall be the boundaries of the respective counties of this territory, and the county seats thereof as named, with the description thereof.

SEC. 2. Costilla county: commencing at a point on the southern boundary of the territory, where the range line between ranges sixty-nine and seventy intersects said boundary; thence north along said range line to the point where the same intersects the Sangre de Christo pass or road; thence in a south-westerly direction on said road, to the summit of the Sangre de Christo range; thence in a northerly and westerly direction along the summit of said range to the head of the main branch of the Mosco creek; thence in a south-westerly direction down the centre of said Mosco creek to where said creek enters into the San Luis valley; thence in a westerly direction to the most easterly point of La Loma del Norte; thence down the centre of the Rio Grande del Norte to the southern boundary of the territory; thence east along said boundary to the place of beginning.

SEC. 3. The county-seat of the county of Costilla is temporarily located at the town of San Luis.

SEC. 4. Saguache county: commencing at the most easterly point of La Loma del Norte; thence in an easterly direction to the point where the Mosco creek enters into the San Luis valley; thence up the centre of said creek to the boundary line of Fremont county on the summit of the Sangre de Christo range; thence in a north-westerly direction along the summit of said range to the south-west corner of Fremont county; thence in a south-westerly direction along said range to the Co-che-to-pa pass; thence on a produced south-easterly line to the mouth of the canyon of the snowy range, from whence flows the Rio Grande del Norte; thence down the centre of said stream to the place of beginning.

SEC. 5. The county-seat of Saguache county is temporarily located at the town of Saguache.

SEC. 6. Conejos county: commencing on the southern boundary of the territory in the centre of the Rio Grande del Norte; thence up the centre of said stream to where it leaves the canyon of the snowy range at the corner of Saguache county; thence in a north-westerly direction along the western boundary of said Saguache county to the Co-che-to-pa pass; thence in a south-westerly direction on the summit of the Uncompagre mountains and the Sierra La Plata, forming the southern boundary of Lake county, to the western line of the territory; thence along the western boundary of the territory to its south-west corner; thence along the southern boundary of the territory to the place of beginning.

SEC. 7. The county-seat of Conejos county is located at the town of Guadaloupe.

SEC. 8. Huerfano county: commencing at a point where the township line between townships twenty-one and twenty-two south intersects the western boundary of the Indian Reserve; thence west on said township line to the point where said line intersects the range line between ranges sixty-two and sixty-three; thence south on said range line six miles to the township line between townships twenty-two and twenty-three south; thence west on said township line to the point where said line if continued would intersect range line between ranges sixty-nine and seventy; thence south to latitude thirty-seven degrees thirty minutes; thence east on said parallel to the eastern boundary of the territory; thence north to the second correction line; thence west to where said line intersects the Indian Reserve; thence in a south-easterly direction following the line of the Indian Reserve to the south-east corner of said reserve; thence westerly along the southern boundary of said reserve to the south-west corner thereof; thence north to the place of beginning.

SEC. 9. The county-seat of Huerfano county is temporarily located at the town of Badito.

SEC. 10. Pueblo county: commencing at a point where the township line between townships seventeen and eighteen south intersects the western boundary of the Indian Reserve; thence west on said township line to the point where the same is intersected by the range line between ranges sixty-seven and sixty-eight; thence south on said range line to the township line between townships twenty-two and twenty-three; thence east on said township line to the range line between ranges sixty-two and sixty-three; thence north on said range line to the township line between townships twenty-one and twenty-two; thence on said township line to the western boundary of the Indian Reserve; thence north on said western boundary to the place of beginning.

Sec. 11. The county-seat of Pueblo county is hereby located at the town of Pueblo.

Sec. 12. Fremont county: commencing at the point in the centre of range sixty-nine, where the centre line of said range intersects township line between townships twenty-two and twenty-three; thence east on said township line nine miles to the range line between ranges sixty-seven and sixty-eight; thence north on said range line to the third correction line south; thence west on said correction line to the point where the same if continued would intersect the Arkansas river; thence due south to the summit of the snowy range; thence along said range to the Sangre de Christo pass or road; thence along said road or pass to where said road intersects the line between ranges sixty-nine and seventy; thence north to the point where the said range line intersects township line between townships twenty-two and twenty-three south; thence east along said township line to the place of beginning.

Sec. 13. The county-seat of Fremont county is located at Canyon City.

Sec. 14. Las Animas county: all that portion of the territory lying south of latitude thirty-seven degrees thirty minutes, and east of the westernmost line of Huerfano county, produced to the southern boundary of the territory. The county-seat of Las Animas county is located temporarily at the town of Trinidad.

Sec. 15. El Paso county: commencing at the junction of the second correction line south with the western boundary of the Indian Reserve; thence due west on said correction line to the Platte river on the eastern edge of the South Park; thence due south to the third correction line south; thence east to the range line between ranges sixty-seven and sixty-eight; thence due south on said range line to the south line of township seventeen south; thence east to the western boundary of the Indian Reserve; thence north to the place of beginning.

Sec. 16. The county-seat of El Paso county is located at the town of Colorado City.

Sec. 17. Douglas county: commencing at a point where the range line between ranges sixty-eight and sixty-nine intersects the first correction line south; thence east on said correction line to the eastern boundary of the territory; thence south on said boundary line to the second correction line south; thence west on said correction line to where said line intersects the line of the "Indian Reserve;" thence along the boundary of said reserve to the point where the western boundary of said reserve intersects the second correction line south; thence west on said correction line to the Platte river; thence down the centre of said river to the point where said river intersects the first correction line south; thence east to the place of beginning.

SEC. 18. The county-seat of the county of Douglas is hereby temporarily located at the town of Frankstown.

SEC. 19. Arapahoe county: commencing at a point on the base line where the range line between the ranges sixty-eight and sixty-nine intersects said base line; thence south on said line to where said line intersects the first correction line south; thence east to the eastern boundary of the territory; thence north on said eastern boundary to the base line; thence west to the place of beginning.

SEC. 20. The county-seat of the county of Arapahoe is hereby located at the town of Denver.

SEC. 21. Weld county: commencing at a point where the range line between the ranges sixty-eight and sixty-nine intersects the base line; thence north to the township line between townships four and five north; thence east on said township line to the range line between ranges sixty-seven and sixty-eight; thence north to the north line of the territory; thence east on said north line of the territory to the eastern boundary of the territory; thence south on said boundary to the base line; thence west on said base line to the place of beginning.

SEC. 22. The county-seat of Weld county shall be located at the town of Latham.

SEC. 23. Larimer county: commencing at a point where the township line between townships four and five north intersects the range line between ranges sixty-seven and sixty-eight, running west six miles; thence south six miles to the township line between townships three and four north; thence west along the northern boundary of Boulder county to the summit of the snowy range; thence in a northerly direction on said summit to the northern boundary of the territory; thence east on said northern boundary to the range line between ranges sixty-seven and sixty-eight; thence south to the place of beginning.

SEC. 24. The county-seat of the county of Larimer is hereby temporarily located at the town of Laporte.

SEC. 25. Boulder county: commencing at a point where the township line between townships one and two south intersects the range line between ranges sixty-eight and sixty-nine; thence west on said township line to the east line of Gilpin county; thence along said line to the South Boulder creek; thence west along the northern boundary of Gilpin county to the summit of the snowy range; thence along the summit of first range to a point at or near the summit of Long's Peak; thence east on said township line to the range line between ranges sixty-eight and sixty-nine; thence south to the place of beginning.

SEC. 26. The county-seat of the county of Boulder is hereby temporarily located at the town of Boulder.

SEC. 27. Jefferson county: commencing at a point where the township line between townships one and two south intersects the range line between ranges sixty-eight and sixty-nine; thence due west twenty miles; thence due south to the junction of North and South Clear creeks; thence south to the Platte river; thence down the centre of said Platte river to the point where said river intersects the first correction line; thence east to the point where said first correction line intersects the range line between ranges sixty-eight and sixty-nine; thence north to the place of beginning.

SEC. 28. The county-seat of the county of Jefferson is hereby temporarily located at Golden City.

SEC. 29. Clear Creek county: commencing at the junction of the North and South Clear creeks; thence up the dividing ridge between said streams to the summit of the snowy range; thence along said summit to the point where the first correction line south if continued would intersect said summit; thence east on said correction line to the western boundary of the county of Jefferson; thence north to the place of beginning.

SEC. 30. The county-seat of the county of Clear Creek is hereby temporarily located at Idaho.

SEC. 31. Gilpin county: commencing at the junction of the North and South Clear creeks; thence north to the South Boulder Creek; thence up the channel of said creek to a point where Beaver Creek unites with Boulder Creek; thence in a line due west to the summit of the snowy range; thence south on said summit to the northern boundary of Clear Creek county; thence in an easterly direction with said northern boundary to the place of beginning.

SEC. 32. The county-seat of Gilpin county is hereby temporarily located at Central City.

SEC. 33. Park county: commencing at a point where the second correction line south intersects the Platte river; thence south to the third correction line south; thence west to the summit of the snowy range, east of the Arkansas river; thence in a northerly direction along the divide between the Arkansas and Platte rivers, and around the head-waters of the Platte river and its branches; thence easterly along the snowy range dividing the waters of the Platte from the waters of the Blue, to the point of intersection with the first correction line south; thence east on said correction line to the western boundary of Jefferson county; thence south on said boundary to the Platte river; thence up the centre of said river to the place of beginning.

SEC. 34. The county-seat of the county of Park is hereby temporarily located at the town of Fairplay.

SEC. 35. Lake county: commencing at a point on the summit of the snowy range, at the north-west corner of the county of Park, and running due west to the western boundary of the territory; thence south on said boundary to the summit of the Sierra La Plata, or the north-west corner of Conejos county; thence easterly along the northern boundary of Conejos county to the head-waters of the Rio Grande del Norte, and where the south-west boundary of Saguache county intersects the northern boundary of Conejos county; thence north-easterly along the summit of the range and north boundary of Saguache county, crossing the Arkansas river at a point three miles below the mouth of the South Arkansas river; thence easterly to the summit of the range which divides the waters of the Platte and Arkansas rivers along the summit of the range and western boundaries of the counties of Fremont and Park in a north-westerly direction to the point of beginning.

SEC. 36. The county-seat of Lake county is hereby temporarily located at Dayton.

SEC. 37. Summit county: all that portion of the territory bounded on the south by the county of Lake, and on the east by the summit of the snowy range, and on the north and west by the territorial boundary.

SEC. 38. The county-seat of the county of summit is hereby temporarily located at the town of Breckenridge.

SEC. 39. The people of no organized county in this territory shall be taxed for the erection of any public buildings in the county to which they may be attached for judicial or military purposes.

SEC. 40. It is further provided that the people may locate permanently the county-seat in any part of the county, by a vote of the majority of the legal voters in each county, according to law.

SEC. 41. Whenever any county shall be organized hereafter, the qualified voters thereof are hereby empowered to select the place of their county-seat, by a vote, at the first election held in the county for the choice of county officers. For that purpose each voter may designate on his ballot the place of his choice for the county-seat; and when the votes are canvassed the place having a majority of all the votes polled, shall be the county-seat; and public notice of said location shall be given within thirty days, by the county commissioners, by posting up notices in three public places in the county.

SEC. 42. Whenever the legal voters of any county are desirous of changing their county-seat, at any time, upon petition being presented to the county commissioners, signed by a majority of them, to be ascertained by said commissioners, it shall be the duty of such commissioners to require the sheriff in giving the notice for the next county election, to notify said voters to designate upon their ballots, at said election, the place of their choice; and if upon canvassing the votes polled or given it shall appear that any one place has a majority of all the votes polled, such place shall be the county-seat, and notice of such change shall be given, as provided in section forty-one.

SEC. 43. If no place has a majority of all the votes polled in either of such elections for the location or change of the county-seat, it shall be the duty of the county commissioners, within one month after any such election, to order a special election and give ten days' notice thereof, in each township in the county, at which election votes shall be taken by ballot, the same as at the general election, and if no place then have a majority of all the votes, the county-seat shall not be changed until the next general election, when a vote may again be taken as provided in section forty-one.

SEC. 44. The aforesaid county commissioners shall have power to make all needed arrangements for having such county-seat surveyed into lots, squares, streets and alleys, selling and disposing of the same, erecting a jail-house, court-house or other county buildings, as to them may seem best.

An act to amend section 32 of An act to Define County Boundaries and to Locate County Seats in Colorado Territory.

[*Approved January* 6, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 45. (I.) That all that part of section 32 of An act to define county boundaries and to locate county-seats in Colorado territory, approved November 1, 1861, after the word "of," in the sixth line of said section be stricken out, and the following be inserted in lieu thereof: "Conejos county, thence easterly along the northern boundary of Conejos county to the headwaters of the Rio Grande del Norte, and where the south-west boundary of Saguache county intersects the northern boundary of Conejos county; thence north-easterly along the summit of the range and north boundary of Saguache county, crossing the Arkansas river at the point three miles below the mouth of the South Arkansas river; thence easterly to the summit of the range which divides the waters of the Platte and Arkansas rivers, along the summit of the range and western boundaries of the counties of Fremont and Park in a north-westerly direction to the point of beginning."

An act to Change the Boundaries of the Counties of Pueblo, Huerfano and Las Animas.

[*Approved January* 9, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 46. (I.) The boundaries of the county of Pueblo shall be as follows, to wit: commencing at a point on the western boundary line of said county, as heretofore constituted, where the fourth correction line south crosses the western boundary of said county, thence running due west six miles; thence due south to the summit of the Greenhorn range of mountains; thence southward along said range of mountains to the summit of the Cuerno Verde Peak; thence north-east in a straight line to the Corral de Toros on the Huerfano river; thence eastward to the Iron Springs; thence due east to the east line of the territory; thence north along said east line of the territory to a point due east of the north-east corner of said county, as heretofore constituted; thence west to the north-west corner of said county, as heretofore constituted; and thence south to the place of beginning.

SEC. 47. (II.) The boundaries of the county of Huerfano shall be as follows, to wit: commencing at the summit of the Cuerno Verde Peak; thence following the summit of the main range of mountains around the head-waters of the Huerfano and Cucharas rivers to the summit of the easterly of the two Spanish Peaks; thence northward along the dividing ridge between the waters of the Santa Clara and Apishapa rivers to the south line of the county of Pueblo, as described in section one of this act; thence westward along said line to the Corral de Toros; thence south-westerly to the summit of the Cuerno Verde Peak, the place of beginning.

SEC. 48. (III.) The boundaries of the county of Las Animas shall be as follows, to wit: commencing at the south-east corner of the county of Pueblo, as defined by the first section of this act, thence running due west to the Iron Springs; thence westerly along the southern line of Pueblo county, as defined by the first section of this act, to the dividing ridge between the waters of the Apishapa and Santa Clara rivers; thence southward up the said dividing ridge to the summit of the easterly of the two Spanish Peaks; thence westerly along the summit of the mountains to the eastern boundary of the county of Costilla; thence south along said eastern boundary of Costilla county to the southern line of the territory; thence east to the south-east corner of the territory; thence north to the place of beginning.

SEC. 49. (IV.) The county officers of the several counties of

Pueblo, Huerfano and Las Animas, as heretofore existing, shall fill their respective offices in the several counties, as defined by the terms of this act, until the expiration of their respective terms of office.

Prior Statutes Repealed. An act to define County Boundaries, and to locate County-Seats in Colorado Territory. Approved November 1, 1861. Laws 1861, p. 52.

An act establishing the mode of locating and changing County-Seats. Approved November 7, 1861. Laws 1861, p. 151.

An act to change the name of Guadaloupe County to Conejos County. Approved November 7, 1861. Laws 1861, p. 143.

An act to locate the County-Seat of Park County, and to legalize certain acts therein named. Approved August 15, 1862. Laws 1862, p. 100.

An act to amend an act entitled An act to establish the mode of locating and changing County-Seats. Approved March 11, 1864. Laws 1864, p. 70.

An act to amend an act entitled An act to define County Boundaries and to locate County-Seats in Colorado Territory. Approved February 24, 1864. Laws 1864, p. 68.

An act to amend an act entitled An act to define County Boundaries and locate County-Seats in Colorado Territory. Approved March 11, 1864. Laws 1864, p. 69.

An act to change and locate the Boundaries of Fremont County. Approved February 6, 1866. Laws 1866, p. 47.

An act to survey and locate portions of the Boundary Line between the Counties of Pueblo, Huerfano and Fremont. Approved February 6, 1866. Laws, 1866, p. 48.

An act to establish the County of Las Animas, and locate the boundaries thereof. Approved February 9, 1866. Laws 1866, p. 49.

An act to establish the County of Saguache, Colorado Territory, and to define the Boundary Lines thereof. Approved December 29, 1867. Laws 1867, p. 54.

An act to locate the County-Seat of Conejos County, Colorado Territory. Approved January 11, 1867. Laws 1867, p. 54.

An act relating to the County-Seat of Weld County, and for other purposes. Approved January 11, 1867. Laws 1867, p. 55.

CHAPTER XXI.

COUNTIES AND COUNTY OFFICERS.

SECTION

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SECTION
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6. Oath to jury.

SECTION
7. May subpœna witnesses; may punish witnesses and jurors for disobedience of process; fees of witnesses.
8. Oath to witness.
9. Testimony reduced to writing.
10. Inquisition, return of.
11. If crime has been committed and the jury charge any party, finding not to be made public till arrest made.
12. Coroner may order an arrest, if party charged present.
13. If not present, warrant to issue.
14. Prisoner to be taken before justice.
15. Form of warrant; to stand in lieu of complaint.
16. Inquisition, evidence, and list of witnesses to be returned to district court.
17. Body to be delivered to friends; expenses how paid.
18. Justice of peace may act in the absence of coroner.
19. May summon physician on inquisition; compensation.

ARTICLE VI.—*Treasurer.*

1. Term; bond; approval.
2. Condition of bond.
3. May appoint deputy.
4. Vacancy, how filled.
5. Certain persons disqualified from holding office of treasurer.
6. General duties of treasurer.
7. To keep books of account; same to be open to inspection of county and territorial officers; shall settle with county commissioners, at annual meeting in July, or whenever required.
8. County orders to be paid in the order of presentation; to be received in payment of county taxes.
9. On removal or resignation, to deliver books, papers and moneys to successor; penalty.
10. County orders to be countersigned by treasurer before delivery by clerk; treasurer to record same.
11. Treasurer to examine records of county commissioners before countersigning any order.
12. Treasurer *ex officio* collector of taxes.
13. To list property omitted by assessor; may administer oaths in such case.
14. To keep cash-book and enter all receipts of money therein, with the amount of each kind of money received; cash-book to be open to inspection of any person.
15. To receipt for all moneys paid to him by virtue of his office, specifying in his receipt the same matters required to be entered in cash-book.
16. To keep registry of county orders, and enter therein all warrants presented for payment.
17. All money to be paid out in the order in which warrants drawn thereon are presented.
18. To pay to territorial treasurer all moneys in same funds in which they are received; affidavit to accompany such payment.
19. Penalty for failure to comply with foregoing section.
20. Officers receiving fines, fees, taxes, etc., to pay the same to county treasurer, in same funds received; affidavit to accompany payment.

ARTICLE VII.—*County Surveyor.*

1. Term; bond; condition.
2. May appoint deputies; certificate of surveyor or deputy to be evidence.
3. Shall make surveys.
4. To keep record of surveys, copy of field-notes and plat; record to be transmitted to his successor.
5. Board of commissioners may fill vacancies.

ARTICLE VIII.—*Assessor.*

1. Term; bond; qualifications.
2. May appoint deputies, with approval of commissioners.
3. Compensation.

ARTICLE IX.—*Justices and Constables.*

1. Two justices of the peace and two constables in each township; one elected annually.

SECTION
2. Justice to give bond before entering on his duties; approval; oath of office.
3. To reside in his township.

ARTICLE X.—*Miscellaneous.*

1. What officers to keep an office at county-seat; office to be kept open during usual hours; books and papers of office to be kept open to inspection of any person; penalty.
2. Time within which to qualify.
3. Deputy to take oath of office.
4. Copies of official records, documents, writs, papers and writings in the office of treasurer, clerk, or probate judge, certified under seal of office, to be evidence.
5. Resignations to whom made.

SECTION
6. County offices vacant, when: governor to declare vacant the office of every officer convicted of a breach of his official bond.
7. Justice acting as coroner and coroner acting as sheriff, powers of.
8. To whom official bonds payable.
9. Person elected to any county or precinct office, he consenting, refusing to qualify, liable to fine.
10. How recovered; for use of school-fund.
11. This act in force from its passage.
12. Section eleven of article one of this chapter not to apply to Arapahoe county.
13. Not more than one commissioner to be elected annually.

ARTICLE I. COUNTIES, COUNTY COMMISSIONERS.

SECTION 1. Each organized county within the territory shall be a body corporate and politic, and as such shall be empowered for the following purposes: *First.* To sue and be sued. *Second.* To purchase and hold real and personal estate, for the use of the county, and lands sold for taxes as provided by law. *Third.* To sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants. *Fourth.* To make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers. *Fifth.* To exercise such other and further powers as may be especially conferred by law.

SEC. 2. Any real or personal estate, heretofore or which may be hereafter conveyed to any county, shall be deemed the property of such county.

SEC. 3. The powers of a county as a body politic and corporate, shall be exercised by a board of county commissioners therefor.

SEC. 4. Each county organized for judicial purposes shall at its own expense provide a suitable court-house and a sufficient jail and other necessary county buildings, and keep them in repair.

SEC. 5. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be the "Board of county commissioners of the county of ———," but this provision shall not prevent county officers when authorized by law, from suing in their name of office for the benefit of the county.

SEC. 6. In all legal proceedings against the county, process shall be served on the clerk of the board of county commissioners, and whenever such suit or proceeding shall be commenced, it shall be the duty of the clerk forthwith to notify the county attorney thereof, and to lay before the board of county commissioners at their next meeting all the information he may have in regard to such suit or proceeding.

SEC. 7. On the trial of any suit in which a county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent and qualified according to law.

SEC. 8. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, where the same shall be paid by the county, no execution shall issue upon said judgment, but the same shall be levied and paid by tax, as other county charges, and when so collected shall be paid by the county treasurer to the person to whom the same shall be adjudged upon the delivery of a proper voucher therefor: *Provided*, That execution may issue on said judgment if payment be not made within sixty days after the time required for the payment of county taxes, to the county treasurer by the proper officers of said county in each year.

SEC. 9. The board of county commissioners shall consist of three qualified electors, any two of whom shall be competent to transact business, who shall be elected according to law.

SEC. 10. At the first election held to choose the first board of county commissioners of any county, the person having the highest number of votes shall continue in office three years, the next highest two years, and the next highest one year; but if two or more persons have the same number of votes, then their terms shall be determined by lot, under the direction of the board of canvassers returning the election, and annually thereafter one commissioner shall be elected and shall continue in office three years: *Provided*, That the period of time from the first election to the next general election, shall be considered the first year.

SEC. 11. Each county shall be divided by the first board of commissioners holding office, into three compact districts, as equal in population as possible, numbered respectively one, two and three, and not subject to alteration oftener than once in two years; and one commissioner shall be elected from each of such districts by the voters of the whole county, as herein provided.[1] Such division of the county into districts shall be made within six months after the first board of commissioners are elected to office.

SEC. 12. Said board of county commissioners shall meet at the county seat of each county on the first Monday in January, April, July and October in each year, and at such other times as in the opinion of the board the public interest may require,[2]

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(1) Not applicable to Arapahoe county. See the amendatory act of January 10, 1868 at the end of this chapter.

(2) An act concerning the County Commissioners of the counties of Conejos and Costilla.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That hereafter the regular meetings of the boards of county commissioners of the and in counties, the population of which is under ten thousand, such commissioners may sit six days in each term; but if the population exceed ten thousand, they may sit nine days, should the business require it: *Provided*, That at their first session they may sit not to exceed fifteen days.

Sec. 13. Each person elected as such commissioner shall on receiving a certificate of his election, take an oath to support the constitution of the United States and the organic act of this territory, and to perform the duties of his office to the best of his ability, which oath being indorsed upon said certificate under the hand and seal of the person administering it, shall be sufficient for said person to act as said commissioner.

Sec. 14. Each member of the board of county commissioners shall be paid by the county a compensation for his services and expenses in attending the meetings of said board at the rate of three dollars per day for the time he shall actually attend, as hereinbefore limited and prescribed, and including the time necessary in going to and returning from the same; they shall also be entitled to fifteen cents per mile, for the distance actually travelled in going to and returning from the county seat.

Sec. 15. The board of county commissioners of each county shall have power at any meeting: *First*, To make such orders concerning the property belonging to the county as they may deem expedient. *Second*, To examine and settle all accounts, of the receipts and expenses of the county, and to examine and settle and allow all accounts, chargeable against the county, and when so settled they may issue county orders therefor, as provided by law. *Third*, To build and keep in repair county buildings, and cause the same to be insured in the name of the county treasurer for the benefit of the county; and in case there are no county buildings, to provide suitable rooms for county purposes. *Fourth*, To apportion and order the levying of taxes, as provided by law; and to borrow, upon the credit of the county, a sum sufficient for the erection of county buildings, or to meet the current expenses of the county, in case of a deficit in the county revenue. *Fifth*, To represent the county and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law. *Sixth*, To set off, organize and change the boundaries of townships, in their respective

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counties of Conejos and Costilla shall be held on the first Mondays of the months of April, July, October and January, and at no other times; and no member of the boards of county commissioners of either of the said counties shall be entitled to pay for more than two days' service at each of the regular meetings of said boards of county commissioners.

Sec. 2. The pay of each of the county commissioners of the said counties shall be three dollars per day during the time that they are employed as hereinbefore provided, and no mileage shall be allowed.

Sec. 3. All acts, sections, and parts of acts, inconsistent with the provisions of this act, are hereby repealed.

Sec. 4. This act shall be in force from and after its passage.

Approved January 10, 1867. Laws 1867, p. 58.

counties, to designate and give names therefor, and to fix the time and place of holding the first election therein. *Seventh*, To establish one or more election precincts in any township, as the convenience of the inhabitants may require. *Eighth*, To lay out, alter or discontinue any road running through one or more townships in such county, and also to perform such other duties respecting roads, as may be required by law. *Ninth*, To grant licenses for keeping ferries in their respective counties; and such other licenses as may be prescribed by law. *Tenth*, To perform such other duties as are, or may be prescribed by law.

SEC. 16. The board of county commissioners shall not borrow money for the purposes specified in the fourth subdivision of section fifteen of this article, without having first submitted the question of such loan to a vote of the electors of the county.

SEC. 17. Whenever it shall become necessary under the provisions of this article, to submit to a vote of the electors of any county, the question of raising any sum of money by a loan, the said board after having determined the sum necessary to be raised, shall cause notice of such determination, and of the time when the question will be submitted to the electors of such county, by written or printed handbills, posted up in five of the most public places in each township for at least thirty days previous to the time fixed for taking such vote.

SEC. 18. At the time specified in such notice, a vote of the electors of such county shall be taken in each of the townships in such county at the place designated in the notice. The inspectors, receiving the votes, shall be the same as required at the general election, and the vote shall be canvassed by the same officers and in the same manner as required at such general election, and the result of such vote shall be certified by them and transmitted to the county clerk within ten days after such vote shall be taken, which certified statement shall be delivered by such clerk, to the board of commissioners at their next meeting. All voting in the several townships, as provided in this section, shall be by ballot, and those voting in favor of such proposed loan, shall have written or printed on their ballots, "For the loan," and those voting against the loan, shall have written or printed on their ballots, "Against the loan;" and if a majority of the votes cast at such election be against the loan it shall not be made.

SEC. 19. The board of county commissioners shall not set off or organize any new township, unless a petition be first presented to the board signed by at least fifty citizens resident therein.

SEC. 20. The board of county commissioners shall alter and change the township organization of their county so as to agree with the standard fixed in the preceding sections, in respect to territory and population, if such change be desired by the citizens of the county, by a petition of a majority of legal voters.

SEC. 21. Every board of county commissioners shall have a seal, or scroll until a seal can be procured, and may alter the same at pleasure. They shall sit with open doors, and all persons conducting themselves in an orderly manner may attend their meetings; and they may establish rules and regulations to govern the transaction of their business.

SEC. 22. They shall, at the first meeting after their election, and after every annual election, choose one of their number chairman, who shall preside at such meeting, and all other meetings during the year, if present; but in case of his absence from such meeting, the members present shall choose one of their number as temporary chairman.

SEC. 23. The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties, and he shall sign all county orders.

SEC. 24. No account shall be allowed by the board of county commissioners unless the same shall be made out in separate items and the nature of each item stated, and where no specified fees are allowed by law, the time actually and necessarily devoted to the performance of any service, charged in such account, shall be specified, which account, so made out, shall be verified by affidavit: *Provided*, That nothing in this section shall be construed to prevent any such board from disallowing any account in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof as they may think proper.

SEC. 25. County orders shall be signed by the chairman and attested by the clerk, and shall specify the nature of the claim or service for which they were issued.

SEC. 26. When any claim of any person against a county shall be disallowed, in whole or in part, by the board of commissioners, such person may appeal from the decision of such board to the district court for the same county, by causing a written notice of such appeal to be served on the clerk of such board within thirty days after the making of such decision, and executing a bond to such county with sufficient security, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant.

SEC. 27. The clerk of the board, upon such appeal being taken, shall immediately give notice thereof to the county attorney, and shall make out a brief return of the proceedings in the case before the board, with their decision thereon; and shall file the same, together with the bond and all the papers in the case in his possession, with the clerk of the district court; and such appeal shall be entered, tried and determined, the same as appeals from justices' courts, and costs shall be awarded in like manner.

SEC. 28. The board of commissioners of their respective counties, shall, at the expense of the county, furnish annually and in due season, to the assessor of the county, suitable blank assessment rolls, for the several townships prepared in accordance with the provisions of law; and shall also provide suitable books and stationery for the use of each of the county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents, and papers belonging to each of said officers; and also, official seals for each of said officers, where the same are required by law.

SEC. 29. The board of county commissioners, at their annual July session of each year, or oftener if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record, opposite to the entry of each order issued, the date when the same was cancelled. They shall also make a list of orders so cancelled, specifying the number, date, amount, and the person to whom the same was payable, and enter the same on the journal of the board.

SEC. 30. The boards of commissioners of their respective counties, at their regular meetings, to be held in January and July in each year, shall cause to be prepared, a statement of the receipts and expenditures of such county during the six months immediately preceding, setting forth the amount of money received from taxes, from the licenses for the sale of intoxicating liquors, and from licenses to sell or peddle other merchandise, respectively, and the amount received from all other sources; setting forth also the amount expended, and the particular objects for which, in each case, every sum of money hath been expended; and such statement, signed by the chairman and clerk of the board, shall be published at least one week in some newspaper printed in the county, or if there be none, by posting in three public places in such county.

SEC. 31. If any commissioner shall refuse or neglect to perform any of the duties which are or shall be required of him by law, as a member of the board of county commissioners without just cause therefor, he shall for each offence forfeit a sum not less than twenty-five dollars nor more than one hundred dollars.

SEC. 32. Whenever any board of commissioners shall organize new townships or alter the boundaries of any townships in their county, they shall cause a plat and record thereof to be made by their clerk, specifying the name and boundaries of such township, which plat and record shall be kept in the office of such clerk, and a copy thereof, under the seal of said board shall be made by said clerk and filed with the proper officer of said township.

SEC. 33. It shall be the general duty of the clerk of the board of commissioners: *First*, To record in a book to be provided for that purpose, all proceedings of the board. *Second*, To make regular entries of all their resolutions and decisions, in all questions concerning the raising of money. *Third*, To record the vote of each commissioner on any question submitted to the board, if required by any member. *Fourth*, Sign all orders issued by the board for the payment of money, and to record in a book to be provided for that purpose, the receipts of the county treasurer of the receipts and expenses of the county. *Fifth*, To preserve and file all accounts acted upon by the board with their action thereon, and he shall perform such special duties as are required by law.

SEC. 34. It shall be the duty of such clerk to designate upon every account which shall be audited and allowed by the board, the amount so allowed, and he shall also deliver to any person who may demand it, a certified copy of any record in his office, or any account on file therein, on receiving from such person fifteen cents for every folio contained in such copy.

SEC. 35. Such clerk shall not sign or issue any county order unless ordered by the board of commissioners authorizing the same; and every such order shall be numbered, and the date, amount and number of the same, and the name of the person to whom it issued, shall be entered in a book kept by him in his office for that purpose.

SEC. 36. The said clerk of each county shall as often as a new township shall be organized in his county, or the boundaries of any township therein shall be altered, and immediately thereafter, make out and transmit to the secretary of the territory a certified statement of the names and boundaries so organized, and of the boundaries of any township, the boundaries of which shall have been altered.

SEC. 37. Such clerk shall receive a reasonable compensation for such services as he may perform as clerk of the board, where no specific fees are allowed therefor, the same to be allowed by the board and paid by the county.

SEC. 38. Any vacancy now existing or that may hereafter occur in the board of county commissioners of any county by reason of death, resignation, removal or otherwise, of one or more county commissioners, shall be filled by appointment of the governor of the territory.

SEC. 39. Every person appointed county commissioner shall hold his office until the general election, and until his successor shall be qualified and enter upon the duties of his office.

SEC. 40. In case of any vacancy now existing or which may hereafter occur in any county office, or in any township or precinct office in any county in this territory, by reason of death, resignation, removal or otherwise, the county commissioners of said county shall have power to fill such vacancy by appointment until an election can be held as provided by law.

ARTICLE II. PROBATE JUDGE.

SECTION 1. There shall be elected in each county a probate judge, who shall hold his office for two years, and who shall before he enters upon the duties of his office execute to the territory of Colorado a bond, in the penal sum of five thousand dollars, with two or more sufficient securities, to be approved as provided by law, conditioned for the faithful performance of the duties required of him by law, and for the faithful application and payment of all moneys and effects that may come into his hand in execution of the duties of his office.

SEC. 2. The probate judge shall keep a record of all probate business done by or before him, which record shall be open to the inspection of all persons without charge; and he shall receive such fees as are by law allowed him for probate business, and such other compensation as the board of county commissioners may determine: *Provided*, That nothing shall be paid by the county if the fees and official compensation of such judge shall amount to five hundred dollars.

SEC. 3. If any vacancy in the office of probate judge should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy, until a successor shall be elected according to law.

ARTICLE III. COUNTY CLERK.

SECTION 1. A county clerk shall be elected in each county of this territory for the term of two years, and he shall before he enters upon the duties of his office execute and file with the county clerk then in office, a bond with two or more sufficient sureties, in the penal sum of not less than five thousand dollars, to be fixed and approved according to law, with conditions in substance as follows, to wit: WHEREAS, The above bounden ——— was elected to the office of county clerk of ———, on the —— day of ——. Now, therefore, if the said ——— shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk as required by law, and shall deliver to his successor in office all the books, records, papers and other things belonging to his said office, then the above obligation to be null and void, otherwise to remain in full force.

SEC. 2. The county clerk shall be, in and for his county, clerk of the board of commissioners and *ex officio* county auditor.

SEC. 3. Every such clerk shall appoint a deputy, in writing under his hand, and shall file such appointment in his office; and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk during such absence or until such vacancy shall be filled. Every such clerk may appoint other deputies, and his sureties shall be responsible under his official bond, for the acts of all such deputies.

SEC. 4. If a vacancy in the office of county clerk should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor shall be elected according to law.

SEC. 5. The county clerk shall keep his office at the county-seat; he shall attend the sessions of the board of county commissioners either in person or by deputy, keep the seals, records and papers of the said board of county commissioners, and keep a record of the proceedings of the said board in a book, as required by law, under the direction of the said board of county commissioners.

SEC. 6. The county clerk shall be *ex officio* recorder of deeds, and shall have custody of, and safely keep and preserve all the books, records, deeds, maps and papers deposited or kept in his office; he shall also record or cause to be recorded in a plain and distinct hand-writing, in suitable books, to be provided and kept in his office, all deeds, mortgages, maps, instruments and writings, authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law.

SEC. 7. Every recorder shall keep a general index direct and inverted in his office. The general index direct, shall be divided into seven columns, with heads to the respective columns as follows, to wit:

Time of Reception	Names of Grantors	Names of Grantees	Nature of Instrument	Vol. and page where Recorded	Remarks	Description of Tract

He shall make correct entries in such general index of every instrument recorded concerning or affecting real estate, under the appropriate headings, entering the names of the grantors in an alphabetical form. The general index inverted, shall be divided into seven columns, as follows, to wit:

Time of Reception	Names of Grantees	Names of Grantors	Nature of Instrument	Vol. and page where Recorded	Remarks	Description of Tract

He shall make in such general index, correct entries of every instrument required by law to be entered in the general index direct, entering the names of the grantees in alphabetical order; and whenever any mortgage, bond or other instrument has been released or discharged from record, whether by written release upon the margin of the record, or by recording a deed of release, the recorder shall immediately note in both general indices under the column headed "Remarks," and opposite to the appropriate entry, that such instrument has been satisfied.

SEC. 8. He shall also keep a receiving book, each page of which shall be divided into five columns, as follows, to wit:

Time of Reception	Names of Grantors	Names of Grantees	To whom Delivered	Fees Received

Whenever any instrument has been received by him for record, he shall immediately indorse upon such instrument his certificate, noting the day, hour and minute of its reception, the volume and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of filing; whenever any instrument has been filed as aforesaid, the recorder shall immediately make an entry of the same in his receiving book under the appropriate heading, with the amount paid as fee for recording the same, and after such instrument has been recorded, he shall deliver it to the person authorized to receive the same, writing the name of the person to whom it is delivered in the appropriate column.

SEC. 9. He shall also keep a large well-bound book in which shall be platted all maps of towns, villages or additions to the same, within his county, together with the description, acknowledgment or other writing thereon. He shall keep an index to such book of plats, which index shall contain the name or names of the proprietor or proprietors of such town or village or addition, and the name of the town, village or addition. No recorder of deeds shall be bound to perform any of the duties required to be performed by this article for which a fee is allowed, unless such fee has been paid or tendered.

SEC. 10. He shall also keep an index of each volume of records kept in his office, showing on one page the grantors' names in alphabetical order, and on the other page the names of the grantees in alphabetical order.

SEC. 11. Copies of all papers filed in the office of the recorder of deeds, and transcripts from the books of records kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases.

ARTICLE IV. SHERIFF.

SECTION 1. A sheriff shall be elected in each county organized for judicial purposes, for the term of two years, and who shall, before he enters upon the duties of his office, execute to this territory a bond, with at least three sufficient securities, in such penal sum not less than five thousand dollars, nor more than twenty thousand dollars, as the board of county commissioners, or if they be not in session, the county clerk, subject to the approval of such board at its next session thereafter, shall specify and approve; said bond when thus approved, to be filed in the office of said clerk, and no person shall be received as surety who is not worth at least two thousand dollars over and above his just debts: *Provided*, That no person shall be elected sheriff for more than two terms in succession.

SEC. 2. The condition of such bond shall be in substance, as follows: WHEREAS, The above bounden —— was elected to the office of sheriff of the county of ——, on the —— day of ——. Now the condition of this obligation is such, that if the said —— shall well and faithfully perform and execute the duties of the office of sheriff of said county of ——, during his continuance in office by virtue of said election, without fraud, deceit or oppression, and shall pay over all moneys that may come into his hands as sheriff, and shall deliver to his successor all writs, papers and other things pertaining to his office which may be so required by law, then the above obligation shall be void, otherwise to be and remain in full force and effect.

SEC. 3. The sheriff of each county shall, as soon as may be after entering upon the duties of his office, appoint some proper person undersheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such undersheriff, or he become incapable of executing the same, another shall in like manner be appointed in his place.

SEC. 4. Whenever a vacancy occurs in the office of sheriff of any county, the undersheriff of such county shall, in all things execute the office of sheriff until a sheriff shall be elected and qualified; and any default or misfeasance in office of such undersheriff in the meantime, as well as before such vacancy, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the bond executed by such undersheriff to the sheriff by whom he was appointed.

SEC. 5. Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts and those of his undersheriffs he shall be responsible, and may revoke such appointments at his pleasure; and persons may also be deputized by such sheriff or undersheriff in writing, to do particular acts, and the sheriff and his sureties shall be responsible on his official bond for the default or misconduct of his undersheriff and deputies.

SEC. 6. Every appointment of an undersheriff or of a deputy sheriff, and every revocation of such appointment shall be in writing, under the hand of the sheriff, and shall be filed in the office of the clerk of the county; but this section shall not extend to any person who may be deputized by any sheriff or undersheriff, to do a particular act only.

SEC. 7. The sheriff shall have charge and custody of the jails of his county, and of the prisoners in the same, and shall keep them himself or by his deputy or jailor, for whose acts he and his sureties shall be liable.

SEC. 8. The sheriff in person, or by his undersheriff or deputy, shall serve and execute acccording to law, all processes, writs, precepts and orders issued or made by lawful authority and to him directed, and shall attend upon the several courts of record held in his county.

SEC. 9. It shall be the duty of the sheriff and undersheriffs and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county as they may deem necessary.

SEC. 10. Whenever the term of office of any sheriff, coroner, probate judge, justice of the peace, constable, county clerk, assessor, county treasurer, county surveyor or other county officers shall expire, as now provided by law, it shall be lawful for such officer, whether re-elected or not, and his deputies, to continue to perform all the duties of such office until his successor shall be duly qualified as required by law.

SEC. 11. Hereafter whenever the term of office of any sheriff shall expire, and the sheriff elect shall file his bond and qualify according to law, the county clerk shall issue a notice setting forth that said sheriff elect has filed his bond and qualified according to law, which notice shall be served by the new sheriff on the former sheriff, whereupon such former sheriff shall immediately transfer and deliver to the new sheriff all the writs, processes, books and papers belonging to his office, except as hereinafter excepted, and also the possession of the court-house and jail of his county, and shall take from the new sheriff a receipt specifying the papers so delivered over, and the prisoners in custody, if any, which receipt shall be sufficient indemnity to the person taking the same.

SEC. 12. Every sheriff going out of office at the expiration of his term and having any writ of *fieri facias*, or fee-bill, which he may have levied but not collected, shall be and is hereby authorized to proceed and collect such execution or fee-bill in the same manner as if his term of office had not expired, and the securities on his official bond shall be liable for any omission or commission of duty in so doing, in like manner as if his said term of office had not expired.

SEC. 13. The provisions of the eleventh and twelfth sections of this article shall apply to all coroners whenever by virtue of the laws of the territory they shall be required to perform the duties of sheriff.

SEC. 14. Any default or misconduct in the office of deputy-sheriff or jailor, after the death, resignation or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

SEC. 15. Any action for default or misconduct of any sheriff, his undersheriff, jailor or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

SEC. 16. Every paper required by law to be served on the sheriff may be served on him in person or left at his office during business hours.

SEC. 17. No sheriff or undersheriff or deputy shall appear or advise as attorney or counsellor in any case in any court.

SEC. 18. Whenever any sheriff shall neglect to make due return of any writ or process delivered to him to be executed or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment or both, at the discretion of the court, subject to appeal, (such fine however not to exceed two hundred dollars,) and also an action for damages to the party aggrieved.

SEC. 19. No sheriff shall directly or indirectly ask, demand or receive for any service to be by him performed in the discharge of any of his official duties any greater fees than are allowed by law, on pain of forfeiture of treble damages to the party aggrieved, and being fined in a sum not less than twenty-five dollars and not more than two hundred dollars.

ARTICLE V. CORONER.

SECTION 1. A coroner shall be elected in each county for the term of two years, who shall before he enters upon the duties of his office give bond to this territory in such penal sum not less than five hundred dollars nor more than five thousand dollars, with sufficient sureties, to be approved by the board of county commissioners, or if such board be not in session, by the county clerk, subject to the approval of such board, and in such sum as they shall direct at their first session thereafter, the condition of which bond shall be in substance the same as that given by the sheriff, such bond to be filed with the clerk of the proper county.

SEC. 2. When there shall be no sheriff in any county, organized for judicial purposes, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county, until a sheriff be elected and qualified; and when the sheriff from any cause shall be committed to the jail of his county, the coroner shall be keeper thereof, during the time the sheriff shall remain prisoner therein.

SEC. 3. Every coroner shall serve and execute process of every kind, and perform all other duties of the sheriff when the sheriff shall be a party to the case, or where affidavit shall be made and filed as provided in the succeeding section, and in all such cases he shall exercise the powers and proceed in the same manner as prescribed for the sheriff, in the performance of similar duties.

SEC. 4. Whenever any party, his agent or attorney, shall make and file with the clerk of the proper court an affidavit stating that he believes that the sheriff of such county will not by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced or about to be commenced in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done.

SEC. 5. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of any person supposed to have died by unlawful means, or the cause of whose death is unknown, found or being in the county, it shall be his duty to summon forthwith six citizens of the county, to appear before him at a time and place named.

SEC. 6. If any juror fails to appear, the coroner shall summon the proper number from the by-standers immediately, and proceed to impanel them, and administer the following oath in substance: You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means, the person whose body lies here dead, came to his death, according to your knowledge and the evidence given you, so help you God.

SEC. 7. The coroner may issue subpœnas, within his county, for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and witnesses shall be allowed the same fees as in cases before a justice of the peace; and the coroner shall have the same authority to enforce the attendance of witnesses, and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the territory.

SEC. 8. An oath shall be administered to the witness in attendance, as follows: You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God.

SEC. 9. The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witness.

SEC. 10. The jurors, having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their inquisition, in writing, under their hands, in substance as follows, and stating the matters in the following form, suggested as far as found: Territory of Colorado, —— county. An inquisition holden at ——, in —— county, on the —— day of ——, A. D. 18—, before ——, coroner of said county, upon the dead body of ——, or person unknown, lying there dead, by the jurors whose names are hereto subscribed; the said jurors, upon their oath, do say, (here state when, how, by what person, means, weapon, or accident, he or she came to his or her death, and whether feloniously). In testimony whereof, the said jurors have hereunto set their hands, the day and year aforesaid.

SEC. 11. If the inquisition find a crime has been committed on the deceased, and name the person whom the jury believes has committed it, the inquest shall not be made public until after the arrest, directed in the next section.

SEC. 12. If the person charged be present, the coroner may order his arrest, by an officer or any person, and shall then make a warrant, requiring the officer or other person to take him before a justice of the peace.

SEC. 13. If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff, or any constable of the county, requiring him to arrest the person, and take him before a justice of the peace.

SEC. 14. The warrant of a coroner in the above cases, shall be of equal authority with that of a justice of the peace; and when the person charged is brought before the justice, he shall be dealt with as a person held under a complaint in the usual form.

SEC. 15. The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest; and such warrant shall be a sufficient foundation for the proceeding of the justice, instead of a complaint.

SEC. 16. The coroner shall then return to the district court, the inquisition, the written evidence, and a list of the witnesses who testify material matter.

SEC. 17. The coroner shall cause the body of a deceased person, which he is called to view, to be delivered to his friends, if there be any, but if not, he shall cause him to be decently buried, and the expenses to be paid from any property found with the body, or if there be none, from the county treasury, by certifying an account of the expenses, which being presented to the board of county commissioners, shall be allowed by them if deemed reasonable, and paid as other claims on the county.

SEC. 18. When there is no coroner, or in case of his absence or inability to act, any justice of the peace of the same county, is authorized to perform the duties of coroner, in relation to dead bodies.

SEC. 19. In the above inquisition by a coroner, where he or a jury shall deem it requisite, he may summon one or more physicians or surgeons, to make scientific examination, and may allow in such case a reasonable compensation, subject to the confirmation of the board of county commissioners.

ARTICLE VI. COUNTY TREASURER.

SECTION 1. A county treasurer shall be elected in each county, for the term of two years, and shall, before he enters on the discharge of his duties, execute to the board of county commissioners of his county, a bond, with three or more sufficient sureties, to be approved by the board, and in such penal sum as they may direct; which bond, with the approbation of the board indorsed thereon by their clerk, shall be filed in the office of the county clerk; and in case the board of commissioners shall not be in session in time for any county treasurer to present his bond for their approval as above specified, or he shall be unable, from any cause, to present his bond at any regular meeting of the board, after due notice of his election, then it may be lawful for such treasurer to present his bond to the clerk of said board for his approval, and his approval indorsed thereon shall have the same effect as if done by the board of commissioners; subject, nevertheless, to the final decision and approval of the board of commissioners at their first meeting thereafter; and in such case, where the board shall not have fixed the penal sum of such bond, it shall not be less than twice the amount of all moneys directed by the board to be levied in the county, and to be paid to such treasurer during the year.

SEC. 2. The condition of such bond shall be in substance as follows: WHEREAS, The above bounden —— was elected to the office of county treasurer of the county of——, on the —— day of ——. Now, therefore, the condition of this obligation is such, that if the said —— and his deputy, and all persons employed in his office, shall faithfully and promptly perform the duties of said office, and if the said —— and his deputies, shall pay, according to law, all moneys which shall come to his hands as treasurer, and will render a just and true account thereof, whenever required by said board of commissioners or by any provision of law, and shall deliver over to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, papers, and other things appertaining thereto or belonging to his office, the above obligation to be void, otherwise to be in full force and effect.

SEC. 3. The county treasurer may appoint a deputy, who, in the absence of the treasurer from his office, or in case of vacancy in said office for any disability of the treasurer to perform the duties of his office, may perform all the duties of the office of treasurer, until such vacancy be filled or such disability removed.

SEC. 4. In case the office of county treasurer shall become vacant, the board of county commissioners may, if in their opinion the interests of the county require it, appoint a suitable person to perform the duties of such treasurer; and the person so appointed, upon giving bond, with like securities and conditions as that required in county treasurers' bonds, and in such sum as said board shall direct, shall be invested with all the duties of such treasurer, until such vacancy shall be filled or such disability removed.

SEC. 5. No person holding the office of sheriff, judge of probate, county clerk, deputy county treasurer, nor any member of the board of commissioners, shall hold the office of county treasurer.

SEC. 6. It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid by him. All money received by him for the use of the county shall be paid out by him only on the orders of the board of commissioners according to law, except where special provision for the payment thereof is or shall be otherwise made by law.

SEC. 7. The said treasurer shall keep a just and true account of the receipt and expenditure of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall be open at all times for the inspection of the board of county commissioners or any member thereof, and to all county and territorial officers; and at the annual meeting in July of the said board of commissioners, or at such other time as they may direct, he shall settle with them his account as treasurer, and for that purpose he shall exhibit to them all his books and accounts, and all vouchers relating to the same to be audited and allowed.

SEC. 8. County orders, properly attested, shall be entitled to a preference as to payment according to the order of time in which they may be presented to the county treasurer, but where two or more orders are presented at the same time, precedence shall be given to the order of the oldest date, but every county treasurer shall receive in payment of county taxes, county orders issued in said county, which may be presented in payment for such county taxes.

SEC. 9. Upon the resignation or removal from office of any county treasurer, all the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon the oath of such preceding treasurer, or in case of his death, upon oath of his executors or administrators. If any such preceding county treasurer, or in case of his death, if his executors or administrators shall neglect or refuse to deliver up such books, papers and moneys on oath when lawfully demanded, every such person shall forfeit a sum of not less than one hundred dollars nor more than five hundred dollars, and be also liable, upon his official bond, for such refusal or neglect.

SEC. 10. In all cases hereafter, where county orders shall be drawn by the county clerk in any county in this territory, upon the treasurer of such county, the said orders, before they are delivered to the person or persons for whose benefit the same is or are drawn, shall be severally presented by the said clerk to the county treasurer, who shall personally countersign the same, and shall also enter in a book to be kept by him for that purpose, the date, amount and number of each of said orders, and the name or names of the person or persons in whose favor such orders are drawn respectively.

SEC. 11. No county treasurer shall countersign any county order before the same is filled up, nor until he shall examine the records of the board of commissioners, and be satisfied therefrom that the order presented to him so to be countersigned was duly ordered to be drawn by said board of county commissioners.

SEC. 12. The county treasurer of each county shall be, by virtue of his office, collector of taxes therein and shall perform such duties in that regard as are prescribed by law.

SEC. 13. It shall be the duty of said county treasurer to assess, at a fair value, the property of any person liable to pay taxes, whom the county assessor has failed to assess, and to place the same on the tax duplicate, and to collect taxes on the same in the manner provided by law: *Provided however*, That said treasurer shall not be compelled to assess such property in person: *Provided further*, That he be authorized to administer oaths to such person, or any others, touching the value of said property.

SEC. 14. Every county treasurer shall have and keep in his office a cash-book, wherein shall be entered and set down every sum of money paid to him by virtue of his office, and the date of such payment, and the name of the person paying the same, the account upon which the same was paid, and the nature of the funds so paid to him, whether gold, silver, United States treasury notes, bank-bills, or territorial or auditor's warrants, or other territorial or county scrip, or evidences of territorial or county indebtedness, and the amount of each separate kind; and such cash-book shall at all reasonable hours of the day be open to the inspection and examination of all persons desiring to inspect or examine the same.

SEC. 15. Upon the payment of any money to him as aforesaid, the county treasurer shall issue his receipt therefor to the person paying the same, setting forth in such receipt all of the matters so as above required to be entered in such cash-book.

SEC. 16. Every county treasurer shall have and keep in his office a book to be called the Registry of county orders, wherein shall be entered and set down at the date of the presentation thereof, and without any interval or blank-line between any such entry and the one preceding it, every county order or other certificate or evidence of county indebtedness at any time presented to such county treasurer for payment, whether the same is paid at the time of presentation or not, the date and number of such order, the amount for which the same is payable, the date of the presentation thereof, the name of the person to whom such order is by the terms thereof payable, and the name of the person presenting the same. Every such registry of county orders shall at all reasonable hours be open to the inspection and examination of any person desiring to inspect or examine the same.

SEC. 17. Every fund in the hands of the county treasurer for disbursement, shall be paid out in the order in which the orders drawn thereon and payable out of the same, shall be presented for payment.

SEC. 18. Every county treasurer shall pay over to the territorial treasurer all territorial taxes and other moneys collected by him on account of the territory, in the same kind of funds in which the same shall be received, and together with all such moneys, every county treasurer shall deliver to the treasurer of the territory a statement, in writing, that he hath paid over the same funds in kind as received by him, and that he hath not exchanged or bartered any of the moneys, coin, bank-bills, treasury notes, or other currency received by him on account of the territory, for any auditor's warrants, territorial scrip, or other certificates or evidences of indebtedness of the territory, nor caused, nor permitted the same to be done, and that all such territorial auditor's warrants, or other certificates or evidences of indebtedness of the territory so by him delivered to the treasurer were received by him in payment of territorial taxes or other moneys due the territory. Every such statement shall be sworn to before the territorial treasurer, and by him filed and preserved in his office, and false-swearing in any such statement shall be deemed to be perjury.

SEC. 19. Every county treasurer who shall fail, neglect or refuse to have and keep in his office such cash-book as required by the fourteenth section of this article, or to set down therein at the time of the receipt thereof, any moneys by him received or collected as such treasurer, or shall make any false or deficient entry thereof, or shall fail, neglect or refuse to have and keep the said cash-book at his office at all reasonable hours of the day, or shall fail, neglect or refuse to permit any person to inspect and examine the same at any reasonable hour of the day, or shall fail, neglect or refuse to issue his receipt for any moneys received by him as such county treasurer, as required by the fifteenth section, or shall fail, neglect or refuse to set down in such receipt the particular kind of all coin, United States treasury notes, bank-bills, or other currency, territorial warrants, auditor's warrants, county orders, or other like certificates or evidences of territorial or county indebtedness, or shall fail, neglect or refuse to have and keep in his office such register of county orders as required by section sixteen, or shall fail, neglect or refuse to enter therein, at the time of the presentation thereof, every county order which may be presented to him for payment, or shall make any false entry thereof, or shall fail, neglect or refuse to pay any order presented to him for payment, there being then money in the treasury appropriated for the payment thereof, or wherefrom by law the same ought to be paid, or shall pay any such order, there not being then remaining in the treasury money sufficient wherefrom all orders drawn upon the same fund, and previously presented, may lawfully be paid, every such county treasurer so offending shall be deemed guilty of a high misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars and not more than five hundred dollars, and the court may adjudge that such treasurer be removed from his office. This section shall extend to the deputies of every such county treasurer.

SEC. 20. Every county clerk, clerk of the district court, district attorney, sheriff, constable, justice of the peace, or other territorial or county officer, by law appointed, required or permitted to receive and pay over to the county treasurer any taxes, fines, fees, or other moneys whatsoever, shall, within thirty days after the receipt of such moneys, pay the same over to the county treasurer, in the same kind of gold or silver coin, or in the same kind of United States treasury notes, bank-bills, county warrants, county orders, county scrip, certificates of indebtedness, or other evidences of indebtedness whatsoever, in which the same were by such officer received; and together therewith such officer so paying over the same shall deliver to such treasurer a statement of the amount of such moneys so collected by him and paid over as aforesaid, the kind of moneys or evidences of debt, whether gold coin, silver coin, United States bonds or treasury notes, bank-bills, county orders, county scrip, auditor's warrants, territorial warrants, or other certificates or evidences of indebtedness of the territory or any county or any person or corporation in which the same and every part thereof were by him received, which statement shall be signed by the person paying the same, and sworn to before such treasurer, and by him filed and preserved in his office. Every person falsely swearing in any such statement shall be deemed guilty of perjury. The county treasurer shall not demand or receive any fee for administering the oath required by this section.

ARTICLE VII. COUNTY SURVEYOR.

SECTION 1. A county surveyor shall be elected for a term of two years, who shall give bond to the board of county commissioners, to be approved by the county clerk of the proper county, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties.

SEC. 2. The county surveyor may appoint as many deputies as he thinks proper, for whose official acts he shall be responsible. The certificate of the county surveyor or any of his deputies shall be admitted as legal evidence in any court of the territory, but the same may be explained or rebutted by other evidence.

SEC. 3. It shall be the duty of the county surveyor, by himself or one of his deputies, to execute any survey which may be required by order of any court, or upon application of any individual or corporation.

SEC. 4. The said surveyor shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided for that purpose by the county, which he shall transmit to his successor in office. He shall also number such surveys progressively, and shall also preserve a copy of field-notes and calculations of each survey, indorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

SEC. 5. If the office of county surveyor be at any time vacant, the board of county commissioners are hereby empowered to appoint some suitable person to perform the duties of the office until a county surveyor be elected.

ARTICLE VIII. COUNTY ASSESSOR.

SECTION 1. A county assessor shall be elected in each county, at the general election, who shall give bond, with two or more sufficient sureties, in a penal sum not less than two thousand dollars, for the performance of his duties to the satisfaction of the board of county commissioners, and subscribe an oath or affirmation for the faithful performance of his duties as such assessor, and who shall be a qualified elector of said county, and shall hold his office for one year, and until his successor is elected and qualified.

SEC. 2. Whenever the board of county commissioners shall be of the opinion that said assessor is unable to perform the duties of his office according to law, they may authorize said assessor to appoint one or more deputies, who shall be sworn, and give bond similar to the principal himself.

SEC. 3. Such assessor, and deputy or deputies, shall receive from said county such a sum, not exceeding seven dollars per day, for each day of actual service in the discharge of his duties, as the said board of county commissioners may deem right and just.

ARTICLE IX. JUSTICES AND CONSTABLES.

SECTION 1. There shall be in each township organized by the board of commissioners of any county, two justices of the peace and two constables, one justice and one constable to be elected annually on the day which may be fixed by law, by the qualified voters of such township. Whenever hereafter any new township is organized, at the first election one justice of the peace and one constable shall be chosen to serve until the first election succeeding, and one justice and one constable to serve until the second election thereafter; and to this end such ballot shall designate which justice and which constable is chosen for the long term and which for the short term.

SEC. 2. Every justice of the peace and constable, before entering upon the duties of his office, shall give bond in the sum of two thousand dollars, payable to the people of the territory, with securities, to be approved as required by law, and conditioned for the faithful discharge of the duties of his office, and that he will pay over all moneys which may come to his hands by virtue thereof, and shall subscribe the oath of office provided by law, which shall be indorsed on his bond.

SEC. 3. Each justice of the peace shall reside and have his office in the township for which he was elected.

ARTICLE X. MISCELLANEOUS PROVISIONS.

SECTION 1. Every sheriff, county clerk, county treasurer, or probate judge, shall keep his office at the seat of justice of his county, and in the office provided by the county, if any such has been provided; and if there be none established, then at such place as shall be fixed by special provision of law; or if there be no such provision, then at such place as the board of county commissioners shall direct; and they shall each keep the same open during the usual business hours of each day, Sundays excepted; and all books and papers required to be in their office, shall be open for the examination of any person; and if any person or officer shall neglect to comply with the provisions of this section, he shall forfeit, for each day he so neglects, the sum of five dollars.

SEC. 2. Every county officer named in this article shall, before entering upon the duties of his office, and within twenty days after receiving official notice of his election or appointment, or within twenty days after the commencement of the term for which he was elected, execute and deposit his official bond, as prescribed by law; and any such officer shall also, within the same time, take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same with his official bond, to be filed and preserved therewith.

SEC. 3. Every deputy appointed to any of said offices shall, before entering upon his duties under such appointment, take and subscribe the like oath of office as that required to be taken by the officer appointing him, and shall deposit the same in the office where the bond of such officer is deposited.

SEC. 4. Copies of all documents, writs, proceedings, instruments, papers and writings duly filed or deposited in the office of any judge of probate, county clerk or county treasurer, and transcripts from books of record, or proceedings kept by any of said officers, with the seal of his office affixed, shall be *prima facie* evidence in all cases.

SEC. 5. All county officers who hold their office by election shall make their resignation to the officer or officers authorized by law to fill such vacancies in such office, respectively.

SEC. 6. Every county office shall become vacant, on the happening of either of the following events, before the expiration of the term of office: *First.* The death of the incumbent. *Second.* His resignation. *Third.* His removal. *Fourth.* His ceasing to be an inhabitant of the county for which he was elected or appointed. *Fifth.* His conviction of any infamous crime, or any offence involving a violation of his official oath. *Sixth.* His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath and bond within the time prescribed by law. *Seventh.* The decision of a competent tribunal, declaring void his election or appointment. *Eighth.* The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

SEC. 7. Whenever any justice of the peace shall be required to act as coroner in any case, or any coroner shall be required to act as sheriff, or any other officer in this territory shall be required to perform any duties belonging to any other office, he shall, for the time being, have the same powers in respect to that duty, as are given by law to the officer whose duties he shall perform, and shall be entitled to receive the same compensation for his services.

SEC. 8. Every official bond of any county officer, where not otherwise provided by law, shall be payable to the people of the territory of Colorado, and an action shall lie thereon to the use of any party aggrieved, in the name of the people.

An act requiring Persons elected or appointed to County or Precinct Offices in this Territory to qualify.

[*Approved January* 9, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 9. (I.) That any person who shall be hereafter elected or appointed to any county or precinct office in any county in this territory, shall refuse to qualify, he or they consenting to such election or appointment, shall be liable to a fine not exceeding one hundred nor less than twenty-five dollars, at the discretion of any court having competent jurisdiction.

SEC. 10. (II.) All fines contemplated in section one of this act shall be recoverable before any court in this territory, in the name of the county in which the case or cases may arise, and shall be appropriated to the use of the school-fund of said county.

SEC. 11. (III.) This act shall be in force from and after its passage.

An act amendatory of An act relating to Counties and County Officers, approved November 6, 1861, and the several acts amendatory thereto.

[*Approved January* 9, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 12. (I.) Section eleven of an act entitled An act relating to counties and county officers, approved November sixth, in the year one thousand eight hundred and sixty-one, and all acts and parts of acts recognizing the division of the several counties into districts for the election of county commissioners from said districts, shall not apply to the county of Arapahoe.

SEC. 13. (II.) Nothing in this act shall be so construed as to authorize the election of more than one county commissioner annually, except that in case of vacancy in the board of county commissioners in Arapahoe county, the said vacancy or vacancies may be filled at the next general election by the qualified voters of said county in the same manner as now provided by law.

Prior Statutes Repealed. An act relating to Counties and County Officers. Approved November 6, 1861. Laws 1861, p. 84.

An act to establish the office of County Attorney, and to define his duties. Approved October 31, 1861. Laws 1861, p. 213.

An act to authorize the appointment of County Commissioners in special cases. Approved August 14, 1862. Laws 1862, p. 44.

An act to amend An act relative to Counties and County Officers. Approved August 9, 1862. Laws 1862, p. 55.

An act to amend An act relative to Counties and County Officers. Approved March 11, 1864. Laws 1864, p. 66.

An act to amend An act to authorize the appointment of County Commissioners in special cases. Approved March 4, 1864. Laws 1864, p. 156.

An act to amend An act relative to Counties and County Officers. Approved March 11, 1864. Laws 1864, p. 66.

CHAPTER XXII.

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26. In order that the killing be either murder or manslaughter, the death must ensue within a year and day.
27. Where the injury inflicted in one county and person injured dies in another, or beyond territory: or where the person committing injury and the person injured are in different counties, trial, where had.
28. Justifiable homicide.
29. A bare fear not sufficient to justify homicide.
30. Self-defence, in what case a justification.
31. Officer resisted executing legal process in a criminal case, justified in killing assailant; or if resisted in attempt to arrest a person charged with felony; *proviso*.
32. An officer executing a criminal in pursuance of sentence of court, justified.
33. Excusable homicide.
34. All other instances which stand on the same footing of reason, to be considered justifiable or excusable homicide.
35. Homicide appearing to be justifiable or excusable, the party accused to be acquitted.
36. The killing being proved, the burden of proving circumstances of mitigation devolves upon the accused.
37. Concealing birth of bastard infant.
38. Distinction between petit treason and murder abolished.
39. Principal and seconds in a duel resulting in death, deemed guilty of a high misdemeanor; penalty.
40. Sending or accepting a challenge; penalty.
41. Bearing a challenge, or being present at and countenancing duel; indictment under foregoing sections, certain allegations unnecessary.
42. Administering poison with intent to murder; administering poison, etc., or using instrument to procure miscarriage; punishment; if woman die, person administering poison, etc., guilty of manslaughter; *proviso*.
43. Mayhem defined; *proviso* where the injury occurred in a fight.
44. Rape.
45. Not necessary to prove emission.
46. Crime against nature.
47. Assault.
48. Assault with intent to commit murder, rape, mayhem, robbery; punishment; assault with a deadly weapon with intent to inflict a bodily injury.
49. Assault and battery.
50. False imprisonment.
51-2. Kidnapping.

DIVISION V.—*Offences against habitations, etc.*

53. Arson defined; punishment; resulting in the death of any person, murder.
54. Setting fire to any building mentioned in foregoing section a high misdemeanor.
55. Burglary.

DIVISION VI.—*Offences relative to property*.

56. Robbery.
57. Larceny.
58. Receiving stolen goods; person convicted of larceny, or of receiving stolen goods not to be sentenced to penitentiary, unless the goods amount in value to five dollars.
59. Property procured by larceny, robbery or burglary to be restored to owner; sale not to divest his title.
60. Branding or defacing brand of any animal with intent to steal same; *proviso*, where property affected by the offence denounced in this section, or by larceny, or receiving stolen goods, does not amount in value to five dollars, offender to be imprisoned in county jail, etc.
61. Embezzlement of money or property by officer, agent or servant of territory or any county or any corporation.
62. Officer intrusted with collection, safe-keeping or disbursement of any public fund, failing to pay over moneys, warrants, bills, orders, etc., to his successor; penalty; *proviso;* every person convicted under this section disqualified to hold office.
63. Defacing, tearing or destroying a deed, bond, lease, will, or record thereof; or any bond, bill, note or security for payment of money or delivery of property; or any evidence of public indebtedness; or any release or receipt, transfer or assurance, etc.; or letter of attorney or other power; day-book or other book of account, contract or agreement, with intent to injure any person or corporation; punishment.
64. Cutting or removing any boundary tree, or mark; penalty.
65. Clerk or servant converting any money or property of his master deemed guilty of larceny.
66. Bailee of money or property converting same, deemed guilty of larceny.
67. Lodger stealing bedding, etc., guilty of larceny.
68. Obstructing any railroad track or bridge, or displacing signal or switch, or placing any false signal thereon; penalty; if death occur from any such act, offender guilty of murder.

DIVISION VII.—*Forgery and counterfeiting*.

69. Forgery.
70. Counterfeiting.
71. Having counterfeit coin in possession with intent to utter same.
72. Having in possession any forged note, bond, bill, &c., or any blank thereof, with intent to fill up and utter same.
73. Having in possession any counterfeit coin; or counterfeit uncoined gold or gold-dust with intent to pass.
74. Mingling base metal or counterfeit dust with gold-dust with intent to utter.
75. Clipping coin.
76. Passing fictitious check or bill of bank not in existence.
77. Having in possession dies, plates, etc., used in counterfeiting.
78. On trial for forgery of bank-note, incorporation of bank may be proved by general reputation.

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79. Experts competent to prove note to be forged.
80. Counterfeiting and using the seal of territory or any public officer; affixing true seal with evil intent; having in possession and concealing such conterfeit seal.

DIVISION VIII.—*Offences against public justice.*

81. Perjury and subornation of perjury.
82. Procuring conviction and execution of an innocent person by perjury or subornation of perjury deemed murder.
83. Indictment for perjury; sufficient to set forth substance of offence.
84. Bribery of any judge, justice of peace or member of legislative assembly.
85. Bribery of any judge, justice of peace, sheriff, clerk, coroner, constable, jailor, etc., or other officer ministerial or judicial.
86. Attempt to bribe, or offering to accept a bribe.
87. Stealing or falsifying public records, etc.
88. Jailor guilty of oppression or inhumanity to any prisoner, how punished.
89. Officer withholding official records or other papers from his successor, or mutilating same, how punished; to apply to every person having public records in possession and withholding or destroying or mutilating same.
90. Acknowledging or procuring to be acknowledged any deed, etc., by false personation of another; how punished.
91. Resisting an officer in execution of process, how punished; officer assaulting or beating any person by virtue of his authority, without necessity, to suffer the same punishment.
92. Resisting any law of the territory with armed force, how punished.
93. Obstructing any messenger travelling with dispatches from executive; or obstructing any officer of territory or of United States in discharge of official duty, or any person acting under authority of such officer; or refusing to aid such officer when called upon, how punished.
94. Rescuing person convicted or found guilty of crime.
95. Rescuing person charged with crime before conviction.
96. Warden of penitentiary or other officer conniving at escape of convict.
97. Warden of penitentiary suffering prisoner to be at large contrary to law.
98. Conveying weapon or tool to convict to enable him to escape.
99. Rescuing prisoner in legal custody on civil process.
100. Assisting any prisoner in county-jail to escape.
101. Assisting to escape or rescuing prisoner from custody of officer.
102. Officer having prisoner in custody before conviction, and suffering an escape; *proviso;* escape through negligence of officer.
103. Officer wilfully refusing to arrest person charged with crime.
104. Compounding criminal offence.
105. Conspiracy to maliciously charge or cause to be indicted any person for criminal offence.
106. Assuming an office without authority.
107. Embracery.
108. Common barratry.
109. Maintenance; *proviso.*
110. Extortion.
111. Malfeasance or corruption in office by any officer; how punished; officer may be removed from office; where attorney or clerk indicted court may appoint an attorney or clerk for that occasion.
112. Sending threatening letter.

DIVISION IX.—*Offences against the public peace.*

113. Disturbing peace at night.
114. Assembling to disturb peace, or for any unlawful purpose, and refusing to disperse on demand of any officer.

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115. Affrays.
116. Unlawful assemblage.
117. Rout.
118. Riot.
119. Officer knowing intention of persons to fight with deadly weapons, and not using his authority to prevent it.
120. Publishing one as a coward; publisher of newspaper to testify; testimony not to be used against him.
121. Libel; truth of writing may be given in justification, except in certain cases.

DIVISION X.—*Offences against public morality, etc.*

122. Bigamy; marriage may be proven by cohabitation; not to extend to a second marriage, the first husband or wife being absent for five years continuously, and not known to be living within that time, nor to any second marriage, the first having been lawfully dissolved or declared void.
123. Unmarried man or woman marrying the husband or wife of another.
124. Cohabitation in open adultery; defendants may suspend prosecution by marriage.
125. Certain marriages declared incestuous and void.
126. Incest.
127. Father rudely and licentiously cohabiting with his daughter.
128. Open lewdness; keeping open tippling or gaming-house on Sabbath, or house of ill-fame or ill-governed and disorderly house.
129. Selling obscene books or pictures.
130. Keeping gambling-house, or permitting same to be used for gambling, how punished; owner knowing that house is kept for gambling, and not causing complaint to be made, deemed to have permitted same; each day a separate offence.
131. Common gambler, who deemed.
132. Playing at any game for money; penalty.
133. Procuring minor to bet on any game; penalty.
134. Violation of four preceding sections a misdemeanor; indictment; information; penalty; how disposed of.
135. Duty of officers in suppressing gambling.
136. Gaming contracts void; assignment not to affect defence.
137. Tavern-keeper permitting any game prohibited by this chapter; penalty; license to be revoked.
138. Selling liquor in quantities less than one quart; penalty.
139. Selling liquor to any common drunkard, or to any Indian; penalty.
140. Selling liquor to soldiers.
141. Obstructing public road, or continuing obstruction; erecting any offensive manfacture, or continuing same; polluting or obstructing any watercourse, etc., so as to render same unwholesome; penalty; nuisance may be abated by order of district court; inquest under writ of *ad quod damnum,* not to bar prosecution.
142. Selling flesh of diseased animal, or other unwholesome provision or adulterated liquors.
143. Territorial or county officers not to deal in territorial or county scrip; penalty; *proviso.*
144. Territorial or county treasurer refusing payment of warrant or county order, there being money in treasury from which same ought to be paid; or county treasurer refusing to receive county order or territorial warrant in payment of taxes; penalty.
145. Uttering bills to circulate as money without authority; penalty.
146. Defacing or tearing down any law, proclamation or public advertisement; penalty; *proviso.*
147. Vagrancy; vagrant may on conviction be arrested and hired out; proceeds of hire how disposed of; vagrant may release himself by giving bond with security, not to become a public charge.
148. Person found with pick-lock, crow, key, etc., with intent to commit a burglary, deemed a vagrant.

SECTION

149. Carrying concealed weapons in any town.
150. Having in possession any offensive weapon with intent to assault any person; penalty.
151. Refusing or neglecting to join *posse comitatus*.
152. Opening grave and removing body for dissection, etc., how punished; *proviso*.
153. Elector voting more than once at same election; penalty.
154. Attempt to influence or coerce an elector at any election; penalty.
155. Sabbath-breaking.
156. Noise, rout, disturbance of the peace on the Sabbath.
157. Disturbing religious worship; or selling liquors within one mile of place of religious assemblage, except, etc.; penalty; *proviso*.
158. Justices of peace to have jurisdiction of offences against last three sections.
159. Persons charged under foregoing four sections may have trial by jury; fines how collected and disposed of.
160. Appeals allowed.

DIVISION XI.—*Cheats, Swindlers, etc.*

161. Party to fraudulent conveyance, how punished.
162. Obtaining money, goods, etc., by false pretences.
163. Cheating.
164. Keeping false scales or weights.
165. Owner of quartz-mill or arastra, etc., neglecting or refusing to pay over proceeds of quartz, etc.; penalty.
166. Reselling or agreeing to sell any tract of land or lot after once selling and conveying same.
167. Penalty for using false weights and measures at any mill.
168. Warehouseman not to issue warehouse receipt unless property has actually been received by him, and is within his control and possession.
169. Warehouseman not to issue warehouse receipt as security for money loaned, unless property at the time be in his possession and belonging to him.
170. Warehouseman not to issue second receipt while a former receipt for same goods is outstanding.
171. Warehouseman not to dispose of or put beyond his control any goods for which receipt has been given, without consent of the person holding such receipt.
172. Warehouseman violating foregoing provisions; penalty; person aggrieved may have his action on the case.
173. Officer of corporation signing false, fraudulent or simulated certificates of stock in such corporation, with intent to utter, etc., without authority, guilty of felony; punishment.
174. Issuing, selling, transferring, etc., any false, fraudulent or simulated certificate of stock in any corporation, felony; penalty.
175. Public ranchman using animal left with him without consent of owner.

DIVISION XII.—*Malicious mischief.*

176. Malicious mischief.
177. Destroying, etc., any public jail.
178. Firing woods or prairies in inhabited parts of territory; *proviso*.

DIVISION XIII.—*Construction of this chapter.*

179. Form of indictment.
180. Exceptions to matters of form to be made before trial; no motion in arrest or writ of error to be sustained except for matters affecting the merits of offence charged; certain defects not grounds for quashal of indictment.
181. Where a county is attached to another for judicial purposes, the venue may be laid in either county.
182. Private injury not to merge in the crime; record of conviction not to be used on trial of civil action.
183. Punishment of death how inflicted.

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184. Body of offender may be delivered to surgeon for dissection, if not claimed by any relative.
185. This chapter to extend to females; infants how punished; where the punishment is discretionary in amount, court to prescribe it.
186. Judges to report defects in this code.
187. Counts for larceny, embezzlement and receiving stolen goods may be joined.
188. Offences herein defined to be punished as herein prescribed; all others by fine not exceeding one hundred dollars, and imprisonment not exceeding six months, in discretion of the court.
189. Where punishment is discretionary, court shall fix and determine same.
190. Fines to be paid into county treasury, for use of county, where no other provision is made; this not to be a cause of challenge to any grand or petit juror.
191. Benefit of clergy, appeals of felony, and trial by battle abolished.
192. Where fine is inflicted, court may order defendant committed to jail till fine and costs are paid.
193. Person sentenced to imprisonment may be condemned to hard labor.
194. Proceeds of labor to be accounted for to county commissioners; commissioners may provide labor for prisoners.
195. Keeper of prison, with consent of county commissioners, may cause prisoners to work on public streets, or in mines, quarries, etc.
196. Prisoner so employed to be in the legal custody of employer; may be chained and secured.
197. Prisoner sentenced to pay a fine and stand committed, etc., allowed one dollar for each day's labor.
198. Moneys arising from wages of prisoner credited to county liable for his detention.
199. Felons disqualified from holding office, or practising as attorneys.
200. What crimes infamous; effect of conviction thereof.
201. Several counts may be joined in what cases.
202. Where person recognized to keep the peace, if prosecutor fail to appear, or if prosecution appear to be malicious, court may adjudge prosecutor to pay costs.

DIVISION XIV.—*Process, indictment, arraignment, etc.*

203. Court in which indictment found to fix amount of bail; amount to be indorsed on process; sheriff to let defendant to bail with sureties; condition of recognizance.
204. Clerk of district court to issue *capias* for offenders indicted, directed to sheriff, coroner and constables of county where defendant is; officer to make arrest, and let offender to bail, or commit to jail; officer to return recognizance; officer with prisoner in custody may pass through any county between place of arrest and place for return of process; may commit to jail of any county in route, for safe-keeping over night; *capias* may be issued returnable instanter.
205. Clerk to issue subpœnas.
206. *Venire* not necessary to be issued in any criminal case; where panel exhausted, whether any juror has been elected or not, *tales* may be issued for not exceeding twenty-four; court may order further *talesmen* summoned.
207. Indictment for false imprisonment or malicious mischief not to be found, unless name of prosecutor indorsed, or unless found on information of two of grand jury, or some public officer; where name of prosecutor indorsed, jury returning verdict of acquittal, to return whether prosecutor hath acted maliciously in instituting prosecution; prosecutor not rendered incompetent.
208. Person charged with murder or other felony to be furnished, previous to arraignment, with copy of indictment and list of witnesses; and in other cases on request.

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209. Arraignment; form of plea.

210. Prisoner standing mute deemed to plead not guilty

211. Plea of guilty not to be entered until court shall explain to prisoner consequences of such plea.

212. Number of peremptory challenges allowed.

213. Jury *de mediatate linguæ* not allowed.

214. Offences committed on county-line, or where person committing injury and person injured are in different counties, trial may be in either county.

215. Grand jury to hear witnesses for people only; may find bill on testimony of one witness, or information of two grand jurors, except for perjury, when two witnesses required; sixteen jurors to be present at the finding of any bill, and twelve to concur therein.

216. Trials to be had according to course of the common-law.

217. Jury retiring to consider verdict to be attended by a sworn officer; parties may in cases of misdemeanor dispense with this requirement.

218. Officer attending jury violating his oath, or any person having conversation with jury, to be punished as for a contempt.

219. Defendants convicted in any criminal prosecution to pay costs.

220. Property of person charged with criminal offence subject to a lien for fine and costs, from day of arrest or finding of indictment; clerk to issue execution for all fines; proceedings thereon.

221. Person convicted may replevy fine and costs by entering into recognizance with securities to pay same; effect of recognizance.

222. Executions for fines and costs may issue to any county.

223. Person confined in jail for non-payment of fine, etc., having no estate wherewith to pay same, may be discharged; *proviso.*

224. Security in recognizance may surrender principal at any time before judgment on *sci. fa.* thereon; such surrender discharges surety.

225. Bills of exception allowed in criminal cases; *proviso.*

226. Defendant convicted in capital case may have writ of error; *supersedeas* thereon how obtained; defendant not to be discharged.

227. Writ of error in cases not capital to be considered a writ of right; *supersedeas* thereon how obtained; prisoner not discharged; but may be admitted to bail; recognizance in such case.

228. Until penitentiary established persons convicted of offences punishable by imprisonment in penitentiary according to this chapter shall be confined in county-jail.

DIVISION XV.—*Limitations.*

229. No person to be prosecuted for felony (murder, arson and forgery excepted) after three years, nor for any offence below grade of felony after eighteen months from committing the crime or offence; *proviso,* not to apply to person fleeing from justice; *proviso,* where indictment, information or complaint quashed, or proceedings thereon set aside, the time of pendency thereof to be excluded.

DIVISION XVI.—*General provisions.*

230. Judges of supreme and district courts, and justices of the peace, to be conservators of the peace; may punish breaches of the peace; may require security to keep the peace, or for their good behavior from persons threatening to break the peace, or who are not of good fame; in default of such security may commit to jail; recognizances may be renewed or discharged.

231. When felonious offence committed, pursuit to be made by sheriffs, coroners, constables, etc.

232. Judges and justices of the peace may issue warrant for the arrest of any person charged with a criminal offence; shall inquire into truth or probability of charge;

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justice of the peace not to admit to bail person charged with offence punishable with death; certain offences to be inquired of before two justices; condition of recognizance.

233. Judge or justice of the peace admitting to bail or committing any offender to recognize, the prosecutor and witnesses to appear before district court at the time at which defendant is required to appear.

234. Recognizances; to whom taken; to be signed, etc., and certified and returned into court; taken in courts of record need not be signed or certified; recognizances for assaults, batteries and affrays.

235. Person committed to jail, recognizance may be taken in vacation by any judge or any two justices of the peace; amount in which bail is required to be indorsed upon warrant of commitment.

236. On complaint exhibited, warrant to issue; power of officer in execution of warrant; may pursue into another county.

237. Judge or justice issuing warrant may indorse thereon an authority to any person to execute same.

238. Person or officer having prisoner in custody may pass through any county on his way to county from which prisoner fled.

239. Warrant need not be under seal upon *habeas corpus;* prisoner not to be discharged for want of form in *mittimus; proviso.*

240. Search-warrant, in what cases to issue; proceedings thereon.

241. Justice to indorse names of witnesses on warrant of commitment.

242. Sheriff to furnish prisoner, on demand, copy of warrant of commitment and names of witnesses; penalty for failure by judge or justice to indorse names of witnesses, or refusal of any sheriff or jailer to give copy.

243. Judge may issue subpœna to witnesses to attend upon hearing of *habeas corpus.*

244. Judge to hear testimony on *habeas corpus,* whether warrant of commitment formal or not.

245. Exceptions allowed to refusal of new trial, or continuance, or change of venue in criminal cases.

246. The act of Nov. 5, 1861, repealed; *proviso.*

247. Sale of intoxicating liquor on day of election prohibited; penalty.

248. This act not to apply to certain persons in certain case.

249. Fines and forfeitures collected in criminal cases to be paid into county treasury.

250. County attorney to collect forfeited recognizances.

251. Form of recognizance or mode of procedure to collect same, not changed.

252. Where part of fine required to be paid to informer, who is not designated or known, whole to be paid into county treasury.

253. All fines heretofore collected, in like case, remaining in hands of judge, justice or clerk of court, to be paid over.

254. Conflicting acts repealed.

255. Larceny or receiving stolen goods, the goods stolen or received not exceeding thirty dollars in value, a misdemeanor.

256. To be punished by fine, or imprisonment, at hard labor.

257. Justice of the peace has jurisdiction to hear complaints under this act, assess fine, and fix term of imprisonment.

258. Justice to keep record of trial; defendant to remain in custody until fine paid.

259. Execution to issue for fine; proceedings.

260. On return of no property found, *capias* to issue; defendant to be imprisoned forty-eight hours for each five dollars of fine, and costs; term of imprisonment to be indorsed on *capias.*

261. Proceedings in case defendant pleads guilty.

262. Appeals allowed to district court.

263. Any person may be prosecuted under this act, or the criminal code.

264. County commissioners to provide work for such convicts; prescribe regulations for working them; place of confinement to be county jail, unless otherwise appointed.

265. The crimes enumerated herein to be deemed infamous.

An act concerning Criminal Jurisprudence.

[*Approved January* 9, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory as follows:

DIVISION I. PERSONS CAPABLE OF COMMITTING CRIMES.

SECTION 1. A crime or misdemeanor consists in a violation of a public law in the commission of which there shall be an union or joint operation of act, and intention or criminal negligence.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

SEC. 3. A person shall be considered of sound mind who is neither an idiot, nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

SEC. 4. An infant under the age of ten years shall not be found guilty of any crime or misdemeanor.

SEC. 5. A lunatic or insane person without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided*, The act so charged as criminal shall have been committed in the condition of insanity.

SEC. 6. An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.

SEC. 7. Any person counselling, advising or encouraging an infant under the age of ten years, lunatic or idiot, to commit any offence, shall be prosecuted for such offence when committed, as principal, and if found guilty shall suffer the same punishment that would have been inflicted on such person counselling, advising or encouraging as aforesaid, had he or she committed the offence directly, without the intervention of such infant, lunatic or idiot.

SEC. 8. A married woman acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable with death, provided it appears from all the facts and circumstances of the case that violent threats, command or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife if she had been found guilty.

SEC. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offence, in which case the person or persons so causing said drunkenness for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence if he she, or they had been possessed of sound reason and discretion.

SEC. 10. Acts committed by misfortune or accident shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

SEC. 11. A person committing a crime or misdemeanor not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger, or that he or she had reasonable cause to believe and did believe that his or her life or member was in danger, shall not be found guilty; and such threats or menaces being proved and established, the person or persons compelling by such threats or menaces, the commission of the offence shall be considered as principal or principals, and suffer the same punishment as if he or she had prepetrated the offence.

SEC. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offence during the continuance of the lunacy or insanity. If after verdict of guilty and before judgment pronounced such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue, and if after judgment and before execution of the sentence, such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the insanity or lunacy. In all these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be at the time of impanelling insane or lunatic.

DIVISION II. ACCESSORIES TO CRIMES.

SEC. 13. An accessory is he or she who stands by and aids, abets or assists, or who, not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.[1]

SEC. 14. An accessory after the fact, is a person who after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found

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(1) An accessory before the fact can be indicted and convicted only as principal. *Baxter* v. *The People*, 3 Gilm. 382. *Brennan* v. *The People*, 15 Ill. 516.

guilty of being an accessory after the fact, shall be imprisoned for any term, not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

DIVISION III. WHO MAY BE WITNESSES IN CRIMINAL CASES.

SEC. 15. The party or parties injured shall in all cases be competent witnesses, unless he, she or they, shall be rendered incompetent by reason of his, her or their infamy or other legal incompetency other than that of interest. The credibility of all such witnessess shall be left to the jury as in other cases.

SEC. 16. Approvers shall not be allowed to give testimony.[2]

SEC. 17. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit wilful and corrupt perjury.

DIVISION IV. OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

SEC. 18. Murder is the unlawful killing of a human being in the peace of the people with malice aforethought, either express or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting or by any other of the various forms or means by which human nature may be overcome and death thereby occasioned.

SEC. 19. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

SEC. 20. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder shall be death.

SEC. 21. Manslaughter is the unlawful killing of a human being without malice express or implied, and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible or involuntary in the commission of an unlawful act, or a lawful act without due caution or circumspection.

SEC. 22. In cases of voluntary manslaughter there must be a

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(2) An approver is one who upon indictment for treason or felony before plea pleaded, confesses the fact, and accuses another in order to secure his own pardon.

Approvement can be made only in capital cases.

An accomplice who is not joined in the indictment is a competent witness. *Gray* v. *The People*, 26 Ill. 346.

serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonble person, or an attempt by the person killed to commit a serious personal injury on the person killing.

SEC. 23. The killing must be the result of that sudden violent impulse of passion supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given, and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder.

SEC. 24. Involuntary manslaughter shall consist in the killing of a human being without any intent so to do, in the commission of an unlawful act or a lawful act which probably might produce such a consequence, in an unlawful manner: *Provided always*, That where such involuntary killing shall happen in the commission of an unlawful act which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder.

SEC. 25. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the penitentiary for a term not exceeding ten years.

SEC. 26. In order to make the killing either murder or manslaughter it is requisite that the party die within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the hurt was done shall be reckoned the first.

SEC. 27. If the injury be inflicted in one county, and the party die within another county or without the territory, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county, and the party killed be in another county at the time the cause of death shall be administered, the accused may be tried in either county.

SEC. 28. Justifiable homicide is the killing of a human being in necessary self-defence, or in the defence of habitation, property or person, against one who manifestly intends or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, burglary and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor in a violent, riotous or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence to any person dwelling therein.

SEC. 29. A bare fear of any of these offences, to prevent which, the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears and not in a spirit of revenge.

SEC. 30. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing, that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary. And it must appear also, that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

SEC. 31. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting or other crime denominated felony by the common-law, and he or they be resisted in the endeavor to take the person accused and to prevent the escape of the accused, by reason of such resistance, he or she be killed, the officer or private person so killing, shall be justified: *Provided*, That such officer or private person previous to such killing shall have used all reasonable efforts to take the accused, without success, and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such accused person.

SEC. 32. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertency or negligence in the party killing. An officer who in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must however in the performance of his duty proceed according to the sentence and the law of the land.

SEC. 33. Excusable homicide by misadventure is when a person is doing a lawful act without any intention of killing, yet unfortunately kills another; as where a man is at work with an axe and the head flies off and kills a by-stander; or where a parent is moderately correcting his child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of reason or moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

SEC. 34. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SEC. 35. The homicide appearing to be justifiable or excusable, the person indicted, shall, upon his trial, be fully acquitted and discharged.

SEC. 36. The killing being proved, the burden of proving circumstances of mitigation, or that justify, or excuse the homicide will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

SEC. 37. If any woman shall endeavor, privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not; every such mother being convicted thereof shall suffer imprisonment in the county jail for a term not exceeding one year: *Provided, however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 38. The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, be punished accordingly.

SEC. 39. If any person hereafter shall wilfully and maliciously, or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and, in so doing, shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof, within a year and a day thereafter; every such offender, his second, as well as the second of the person killed, and all aiders, abettors, and councillors, being thereof duly convicted, shall be considered to have committed a high misdemeanor, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years, nor less than one year.

SEC. 40. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either, or if any person shall accept a challenge, or agree to fight a duel; every person so offending, shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust, or emolument, either civil or military, under the government of this territory, and be fined in a sum not exceeding five hundred dollars.

SEC. 41. If any person shall willingly or knowingly carry or deliver any written challenge, or verbally deliver any message intended as, or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto; such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person, or persons for fighting a duel, or against their seconds, aiders, abettors, or councillors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as, or purporting to be a challenge, or for being present at the fighting of any duel as second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument, or weapon, with which the duel shall be fought, or intended to be fought, so that it be alleged in the indictment, that the engine, weapon, or instrument was deadly, the probable consequence of fighting with which, might be the death of either of the parties.

SEC. 42. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance, or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, and not more than ten years; and every person who shall administer, or cause to be administered or taken, any such poison, substance or liquid, or who shall use, or cause to be used, any instrument of whatsoever kind, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, in the penitentiary, and fined in a sum not exceeding one thousand dollars; and if any woman by reason of such treatment shall die, the person, or persons, administering or causing to be administered, such poison, substance, or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished accordingly, unless it appear that such miscarriage was procured or attempted by or under advice of a physician or surgeon, with intent to save the life of such woman, or to prevent serious and permanent bodily injury to her.

SEC. 43. Mayhem consists in the unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out, or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily and of purpose, put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than three years: *Provided*, That no person shall be found guilty of mayhem, where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had in good faith, endeavored to decline further combat. But in all other cases, where the fact shall happen in actual fight, the party accused being thereof duly convicted, shall be adjudged guilty of a high misdemeanor and punished by imprisonment in the penitentiary, not exceeding one year, and be fined not exceeding one thousand dollars.

SEC. 44. Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child, under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be punished by confinement in the penitentiary for a term not less than one year, and such imprisonment may extend to life.

SEC. 45. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

SEC. 46. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and such imprisonment may extend to life.

SEC. 47. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.[3]

SEC. 48. An assault with an intent to commit murder, rape, mayhem, robbery, or larceny, shall subject the offender to confinement in the penitentiary for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a high misdemeanor, and any person thereof duly convicted, shall be fined in a sum not exceeding two thousand dollars, and imprisoned not exceeding one year, in the county jail.

SEC. 49. Assault and battery is the unlawful beating of another.

SEC. 50. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority;[4] any person convicted of false imprisonment shall be fined in any sum not exceeding

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(3) An assault, or assault and battery, is not an indictable offence. *Carpenter* v. *The People*. 4 Scam., 197.

(4) The words "sufficient legal authority" mean "process of law instituted and procured upon reasonable and probable cause," *Slomer* v. *The People*, 25 Ills. 72.

five hundred dollars, or imprisoned not exceeding one year in the county jail.

SEC. 51. Kidnapping is the forcible abduction or stealing away of a man, woman or child from his or her own country, and sending or taking him or her into another.

SEC. 52. Every person who shall forcibly steal, take or arrest any man, woman or child, whether white, black or colored, in this territory, and carry him or her into another country, state or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this territory without having established a claim according to the laws of the United States, shall upon conviction be deemed guilty of kidnapping. Every person found guilty of kidnapping shall be confined in the penitentiary for a term not less than one year and not more than seven years for each person kidnapped or attempted to be kidnapped.

DIVISION V. CRIMES AND OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

SEC. 53. Every person who shall wilfully and maliciously burn or cause to be burned any dwelling-house, kitchen, office, shop, barn, stable, storehouse, warehouse, factory, mill, pottery or other building, the property of any other person, or any church, meeting-house school-house, state-house, court-house, work-house, jail or other public building; or any boat or other water craft; or any bridge of the value of fifty dollars erected across any of the waters of this territory; such persons so offending shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

SEC. 54. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with the intent to burn or destroy the same, shall be deemed guilty of a high misdemeanor, and upon conviction thereof shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding one thousand dollars.

SEC. 55. Every person who shall in the night-time wilfully and maliciously and forcibly break and enter, or wilfully and maliciously without force (the door or any window being open) enter into any dwelling-house, kitchen, office, shop, storehouse, warehouse, malt-house, stilling-house, banking-house, hotel, saloon, mill, pottery, factory, water-craft, church or meeting-house, with intent to commit murder, robbery, rape, mayhem, larceny, or other felony, or who being lawfully within any room or apartment of any of the buildings aforesaid, shall with like intent, either with or without force, enter into any other room or apartment of the same building, shall be deemed guilty of burglary, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

DIVISION VI. CRIMES AND OFFENCES RELATIVE TO PROPERTY.

SEC. 56. Robbery is the felonious and violent taking of money, goods or other valuable thing from the person of another by force or intimidation. Every person guilty of robbery, shall be punished by confinement in the penitentiary for a term not less than three years nor more than fourteen years.

SEC. 57. Larceny is the felonious stealing, taking and carrying, leading, riding or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money or other personal property, or those means or muniments by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the daytime, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

SEC. 58. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall upon conviction be punished by confinement in the penitentiary for any term not less than one year nor more than ten years; and every such person may be tried, convicted and punished, as well before, as after the trial of the principal. No person convicted of larceny, or of buying or receiving goods, or other things obtained by larceny, burglary or robbery, shall be condemned to the penitentiary, unless the money or value of the things stolen, bought or received, shall amount to five dollars.

SEC. 59. All property obtained by larceny, robbery or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property; such owner may maintain his action not only against the felon, but against any person in whose possession he may find the same.

SEC. 60. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with the intent thereby to steal the same, or to prevent identification thereof by the true owner, shall on conviction thereof be punished by confinement in the penitentiary for a term not less than one year nor more than five years: *Provided*, That no person shall be condemned to the penitentiary under this section, unless the value of the property affected shall amount to five dollars. And in case the value of the property affected by the offences herein described, or by larceny, or by buying or receiving goods, or other property obtained by larceny, burglary or robbery shall not amount to five dollars, then the offender shall be punished by imprisonment in the county-jail for a term not exceeding six months, or fined not exceeding one hundred dollars.[5]

SEC. 61. Every servant, officer or person employed in any public department, station or office of the government in this territory or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take and carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank-bills or notes, or any other writing or security for the payment of money or property of whatever description it may be, being the property of said territory, county or corporate body, shall on conviction be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

SEC. 62. If any officer or person who now is or hereafter may be intrusted by law to collect, disburse, receive or safely keep any money or moneys, revenue or revenues, belonging to this territory, to the school-fund of this territory, to the school-fund of any county or township, to any county in this territory, to any canal, turnpike or railroad fund of this territory or any county thereof, or to any fund for the improvement of any public road, river, creek or other watercourse bordering on or within this territory, or to any other fund now in being or hereafter to be established by law for public purposes, shall fail or refuse to pay over all moneys, warrants, bills, notes and orders which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall re-

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(5) Upon trial of an indictment for larceny, the jury returned a verdict of guilty without finding the value of the property stolen. Held to be a fatal defect. *Highland* v. *The People*, 1 Scam. 392. *Sawyer* v. *The People*, 3 Gilm. 54.

But upon an indictment for stealing bank-bills, a verdict of "guilty of larceny of $1270 as charged in the indictment," was held to be sufficient. *Hildreth* v. *The People*, 32 Ills. 36.

ceive for safe keeping belonging to this territory, or to any county of this territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, warrants, bills, notes or orders, ought by law to be paid over, or his or their attorney or agent, duly authorized in writing, signed and acknowledged if such demand be practicable; every such officer or person shall on conviction thereof be punished by confinement in the penitentiary for a term not less than one year nor more than ten years: *Provided*, That no person shall be committed to the penitentiary under this section, unless the money not paid over shall amount to one hundred dollars, or it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this territory.

SEC. 63. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any other writing sealed, or any public record of any such writing, or any bank-bill, or note, check, warrant for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this territory or of the United States or any of them, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit or other demand, or any transfer or assurance of money, stock, goods, chattels or other property, or any letter of attorney or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with the intent to defraud, prejudice or injure any person or body corporate, shall upon conviction thereof be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

SEC. 64. Every person who shall knowingly, maliciously and fraudulently cut, fell, alter or remove any certain boundary tree or other allowed landmark, to the wrong of his neighbor, or any other person, shall on conviction thereof pay a fine not exceeding one hundred dollars, or be imprisoned in the county-jail for a term not exceeding three months.

SEC. 65. If any clerk, apprentice or servant, whether bound or hired, to whom any money, bank-bill or note, or goods or chattels, shall be intrusted or delivered by his master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank-bill or note, or goods or chattels, or any part thereof, with the intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, shall embezzle the said money, bank-bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny and be punished accordingly.

SEC. 66. If any bailee by finding or otherwise of any money, bank-bill or note, or goods or chattels, shall convert the same to his or her own use with intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof shall be punished accordingly.

SEC. 67. If any lodger shall take away, with intent to steal, embezzle or purloin any bedding, furniture, goods or chattels, which he or she is to use in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction shall be punished accordingly.

SEC. 68. If any person shall wilfully and maliciously displace or remove any switch, signal or rail of any railroad, or shall break down, rip up, injure or destroy any railroad track, or railroad bridge, or any portion thereof, or shall place any obstruction whatever upon any such railroad track, or bridge, or switch, or shall place any false signal upon or in the vicinity of any railroad track with intent that any person or property being or passing upon or over such railroad track or bridge should be injured, delayed or hindered, every such person so offending shall be punished by imprisonment in the penitentiary not less than one year and not exceeding five years. And if in consequence of any such act done, with the intent aforesaid, any person or property shall in fact be injured, every such person so offending shall be punished by imprisonment in the penitentiary not less than three years and not exceeding ten years; or if by reason of any such act done as aforesaid, with the intent aforesaid, any person is killed, or the life of any person is lost, every such person so offending shall be deemed guilty of murder.

DIVISION VII. FORGERY AND COUNTERFEITING.

SEC. 69. Every person who shall falsely make, alter, forge or counterfeit any record or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, United States treasury note or United States bond, bank-bill or note, post-note, check or draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county-order or any accountable receipt, or any order or warrant or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, action, suit, demand, or other thing real or personal, or any transfer or assurance of money, stock, goods, chattels or other property whatever; or any letter of attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements or other estate real or personal; or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note for money or other property; or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this territory or not; or shall utter, publish, pass or attempt to pass as true and genuine, or cause to be uttered, published, passed, or attempted to be passed, as true and genuine, any of the above named false, altered, forged or counterfeited matters as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate reside in this territory or not; every person so offending shall be deemed guilty of forgery, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 70. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this territory, or shall pass, or give in payment, or offer to pass or give in payment such counterfeited coin, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 71. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current or hereafter to be current in this territory, with intent to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 72. Every person who shall have in his or her possession or shall receive from any other person, any forged promissory note or notes, treasury notes, bond or bank-bill or bills, for the payment of money, with intent to utter or pass the same, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body corporate or politic, reside in or belong to this territory or not, knowing the same to be forged or counterfeited;[6] or shall have or keep in his or her possession any blank or unfinished note, treasury-note, bond or bank-bill, made in the form or similitude of any promissory note, treasury-note, draft, bond, receipt or bill for the payment of money, made to be issued by any incorporated bank or banking-company in this territory or elsewhere, or by the government of the United States, with intent to fill up and complete such blank and unfinished note, treasury-note, bond, draft, receipt or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall upon conviction thereof be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 73. Every person who shall have in his possession, or receive for any other person any counterfeit gold or silver coin, or any counterfeit uncoined gold in bars or otherwise, or any counterfeit gold-dust, now current, or that shall hereafter be current in this territory by law or usage, with intent to utter or pass the same, or permit, cause or procure the same to be uttered or passed with intent to defraud any person, body politic or corporate, knowing the same to be counterfeit, shall upon conviction thereof be punished by imprisonment in the penitentiary for a term not less than one year and not more than fourteen years.

SEC. 74. Every person who shall mingle or procure to be mingled with any uncoined gold or gold-dust now current, or which shall hereafter be current in this territory, any counterfeit gold-dust, or counterfeit uncoined gold, or any base metal

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(6) To constitute the offence defined in this section the prosecution must establish, *First*, Possession of the counterfeit bill etc. by the prisoner. *Second*, A knowledge on his part of its being counterfeit. *Third*, An intent to pass it with a view to defraud. *Brown* v. *The People*, 4 Gilm. 440.

It is unnecessary to allege in the indictment that the bills were "for the payment of money." *Townsend* v. *The People*, 3 Scam. 326.

or substance whatever, with intent to utter or pass the same, or to procure the same to be uttered or passed as gold-dust or uncoined gold, shall on conviction thereof be punished by a fine not to exceed one thousand dollars, or by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 75. Every person who, with intent to defraud shall impair falsely, clip, scale, lighten or diminish any gold or silver coin now current, or that shall hereafter be current by law or usage in this territory, shall be deemed guilty of forgery, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 76. Every person who shall make, pass, utter or publish with intent to defraud any person or persons, body politic or corporate, either in this territory or elsewhere, or with like intent shall attempt to pass, utter or publish, or shall have in his or her possession with like intent to pass, utter or publish any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument of writing, for the payment of money or property of some bank, corporation, copartnership or individual, when in fact there shall be no such bank, corporation, copartnership or individual in existence, the said person knowing the bill, note, check or instrument of writing for the payment of money or property, to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 77. Every person who shall make, or knowingly have in his possession any die or dies, plate or plates, or any apparatus, paper, metal, machine or other thing whatever made use of in counterfeiting the coin now current, or hereafter to be current in this territory, or in counterfeiting bank-notes, treasury notes, bonds or bills, whether such bank be situate in this territory or not, upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machines intended for the purposes aforesaid, shall be destroyed.

SEC. 78. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass any such forged bill or note, it shall not be necessary to prove the incorporation of any such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 79. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

SEC. 80. Every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this territory, or the seal of any court or public officer, by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly or with evil intent affix any of the said true seals to any commission, deed, warrant, pardon, certificate or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

DIVISION VIII. CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

SEC. 81. Every person having taken a lawful oath or made affirmation in any judicial proceeding, or in any other matter where by law an oath or affirmation is required, who shall swear or affirm wilfully, corruptly and falsely in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury, as the case may be, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 82. Every person who by wilful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof shall suffer the punishment of death.

SEC. 83. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and before what court or authority the oath of affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the record or proceedings either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed, or the form of the oath or affirmation or the manner of administering the same.

SEC. 84. If any person or persons shall directly or indirectly give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, reward, or any other thing to obtain or procure the opinion, judgment or decree of any judge or justice of the peace acting within this territory, or to corrupt, induce or influence such judge or justice of the peace, to be more favorable to one side than to the other in any suit, matter or cause depending or to be brought before him or them, or shall directly or indirectly give any sum or sums of money, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward or other thing, to obtain, procure or influence the vote of any member of the legislative assembly, or to incline, induce or influence any such member of the legislative assembly to be more favorable to one side than to the other, on any question, election, matter or thing pending or to be brought before the legislative assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly, who shall in anywise accept or receive the same, shall be deemed guilty of bribery, and on conviction shall be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

SEC. 85. If any person shall directly or indirectly give any sum or sums of money or any other bribe, present or reward, or any promise, contract, obligation or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney-general or prosecuting attorney, member of the legislative assembly or other officer, ministerial or judicial (except such fees as are allowed by law) with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required with partiality or favor or otherwise contrary to law, the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security, with intent, or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and on conviction shall be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

SEC. 86. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney-general, county or prosecuting attorney, or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections, and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney-general, county or prosecuting attorney, or other ministerial or judicial officer who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall on conviction be fined in a sum not exceeding one thousand dollars.

SEC. 87. If any judge, justice of the peace, sheriff, coroner, clerk, recorder or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond or contract, or shall knowingly and wilfully take off, discharge or conceal any issue, forfeited recognizance or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registry, acknowledgment or certificate, or shall alter, deface or falsify any minute, document, book or any proceeding whatever of or belonging to any public office within this territory, the person so offending and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than seven years.

SEC. 88. Every jailor who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office.

SEC. 89. If any officer whose office shall be abolished by law, or who after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall wilfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents or other writing appertaining or belonging to his office, or mutilate, destroy or take away the same, the person so offending shall on conviction be punished by fine not exceeding one thousand dollars. The provisions of this section shall apply to any person or persons who shall have records, documents, papers or other writings in his, her or their possession, and who shall wilfully mutilate, destroy, withhold or detain the same as aforesaid.

SEC. 90. If any person shall without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof shall be punished by confinement in the penitentiary for any term not less than one year or more than ten years.

SEC. 91. If any person shall knowingly and wilfully obstruct, resist or oppose any sheriff, deputy-sheriff, coroner, constable or other officer of this territory, or other person duly authorized in serving or attempting to serve any lawful process[7] or order of any court, judge or justice of the peace, or any other legal process whatsoever, or shall assault or beat any sheriff, deputy-sheriff, coroner, constable or other officer or person duly authorized in serving or executing, or attempting to serve or execute any process or order as aforesaid, or for having served or executed or attempted to serve or execute the same, every person so offending shall be fined in a sum not exceeding five hundred dollars, and be imprisoned for a term not exceeding one year: *Provided*, Any officer or person whatever, that may or shall assault or beat any individual under color of his commission or authority, without lawful necessity so to do, shall on conviction suffer the same punishment.

SEC. 92. If any person or persons shall in anywise aid, assist, engage in, co-operate or participate with any armed force of men, with intent by force of arms to obstruct, retard or resist the execution of any law of this territory, or shall with such armed force invade any portion of this territory, any such person or persons so offending shall on conviction, be fined in any sum not exceeding one thousand dollars, or imprisoned for a term not exceeding ten years.

SEC. 93. If any person or persons shall wilfully and knowingly intercept, obstruct or oppose any messenger travelling in any part of this territory and carrying orders or dispatches from the executive department of this territory, or shall in any manner oppose, resist or in any manner obstruct any officers of the United States or of this territory, or any person or persons acting under the authority or by the direction of such officers while engaged in the discharge of any official duty, or shall when called upon by any such officer, refuse or neglect to aid or assist such officer in arresting any person or persons, any such person or persons so offending, shall on conviction be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, or by both such fine and imprisonment.

SEC. 94. If any person or persons shall set at liberty, or rescue any person, who shall have been found guilty or convicted of a crime, the punishment of which is death, such person on conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than four-

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(7) The indictment must aver or show that the process, in the execution of which the officer was resisted, was a lawful process. *Cantrill* v. *The People*, 3 Gilm. 356. *McQuoid* v. *The People*, 3 Gilm. 78.

The process must have issued from a court having jurisdiction to issue it, and the officer resisted must have been authorized at the time and place to execute it. *Bowers* v. *The People*, 17 Ill. 373.

teen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in the custody of an officer or in the penitentiary, the person so offending on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

SEC. 95. If any person shall set at liberty or rescue any person who before conviction stands charged or committed for any capital offence, or any crime punishable by confinement in the penitentiary, such person so offending, shall be on conviction fined in a sum not exceeding one thousand dollars and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty if he or she had been found guilty.

SEC. 96. If the warden of the penitentiary or any servant, officer or agent belonging to or in employment at the same, or any sheriff, deputy-sheriff or jailor or any person employed by them as a guard, shall fraudulently contrive, procure aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, or in said penitentiary committed, every such person on conviction shall be punished by confinement in said penitentiary for a term not less than one year nor more than ten years.

SEC. 97. If the warden of the penitentiary or other person as aforesaid, shall negligently suffer any convict committed or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by a fine not exceeding two hundred dollars.

SEC. 98. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof shall be punished by a fine not exceeding five hundred dollars, and imprisonment in the penitentiary not exceeding six months.

SEC. 99. If any person or persons shall rescue another in legal custody on civil process, such person or persons shall on conviction, be fined in any sum not exceeding the sum for which said civil process issued.

SEC. 100. If any person shall aid or assist a prisoner lawfully committed or detained in any jail for any offence against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from the jail, though no escape be actually made, or if any person shall convey or cause to be delivered to any such prisoner any disguise, instrument or arms proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made) shall on conviction be punished by a fine not exceeding five hundred dollars, and imprisoned in the county-jail for a term not exceeding one year.

SEC. 101. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue, or shall attempt to rescue any prisoner from the custody of any sheriff, deputy-sheriff, coroner, constable, officer or other person who shall have the lawful custody of such prisoner, every person so offending shall on conviction thereof be fined not exceeding one thousand dollars, and imprisoned in the county-jail not exceeding one year.

SEC. 102. If any sheriff, coroner, jailer, keeper of a prison, constable or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending, shall on conviction thereof, be fined in any sum not exceeding one thousand dollars, and be imprisoned in the county-jail for any term not exceeding six months: *Provided*, That if such prisoner be in custody, charged with murder or other capital offence, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary for any term not less than one year nor more than ten years. A negligent escape of a person charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by a fine not exceeding five hundred dollars.

SEC. 103. If any sheriff, coroner, keeper of a jail, constable or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, then such sheriff, coroner, jailer, constable or other officer, shall on conviction be fined not exceeding five hundred dollars, and imprisoned not exceeding six months in the county-jail.

SEC. 104. If any person shall take money, goods, chattels, lands or other reward or promise thereof to compound any criminal offence, such person or persons shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon or receiving compensation for the private injury occasioned by the commission of any such criminal offence.

SEC. 105. If any two or more persons shall conspire or agree falsely and maliciously, to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offence, each of the persons so offending shall on conviction be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

SEC. 106. If any person shall take upon himself to exercise or officiate in any office or place of authority in this territory, without being lawfully authorized thereto, he shall upon conviction, be fined in a sum not exceeding two hundred dollars.

SEC. 107. Embracery is an attempt to influence a juror or jurors, corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, entertainments and the like. Every embracer who shall procure any juror to take money, gain or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the petit jurors.

SEC. 108. If any person or persons shall wickedly and wilfully excite and stir up any suits or quarrel between the people of this territory, either at law or otherwise, with a view to promote a strife and contention, every such person so offending shall be deemed to have committed the crime of common barratry, and upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars, and if he be an attorney or counsellor at law, he shall be suspended from the practice for any time not exceeding six months.

SEC. 109. If any person shall officiously intermeddle in any suit at common-law or in chancery, that in nowise belongs to or concerns such person, by maintaining or assisting either party with money, or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person so offending shall be deemed to have committed the crime of maintenance, and upon conviction thereof shall be fined and punished as in cases of common barratry:[8] *Provided*, That it shall not be

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(8) The statute defining and providing for the punishment of maintenance, under which general name, according to the elementary books, champerty is embraced, seems to have abolished the

deemed maintenance for a man to maintain the suit of his kinsman, or servant, or poor neighbor out of charity.

Sec. 110. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer of this territory, ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward to execute or do his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and on conviction thereof, shall be fined in any sum not exceeding two hundred dollars.

Sec. 111. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor or attorney-general or prosecuting attorney, who shall be guilty of any palpable omission of duty, or who shall wilfully and corruptly be guilty of oppression, malfeasance or partiality in the discharge of his official duties, shall upon conviction thereof be fined in a sum not exceeding two hundred dollars. And the court shall have power upon the recommendation of the jury to add to the judgment of the court, that any officer so convicted shall be removed from office. The court shall have power, whenever any clerk of the district court, attorney-general or prosecuting attorney shall be presented or indicted, to appoint for that occasion a prosecuting attorney, attorney-general or clerk, as the case may require, who shall thereby be invested in relation to such presentment or indictment, with all the powers of clerk or attorney-general or prosecuting attorney. It shall be the duty of the court when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

Sec. 112. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels or other valuable things, or threatening to maim, wound, kill or murder, or to burn his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities or failings, though no money, goods, chattels or valuable thing be demanded, such person so offending, shall on conviction be fined in a sum not exceeding five hundred dollars and imprisoned not exceeding six months.

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common-law offence, and to have in its stead created a statutory offence under the general name maintenance. Skinner J. in *Newkirk* v. *Cone*, 18 Ill. 449.

DIVISION IX. OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILLITY.

SEC. 113. If any person at late or unusual hours of the night-time, shall maliciously or wilfully disturb the peace or quiet of any neighborhood or family by loud or unusual noises, or by tumultuous and offensive carriage, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof, shall be fined in a sum not exceeding fifty dollars, or imprisoned in the county-jail not exceeding two months.

SEC. 114. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace, sheriff, coroner, constable or other public officer, such persons so offending, shall on conviction be severally fined in any sum not exceeding fifty dollars, and imprisoned in the county-jail not exceeding one month.

SEC. 115. If two or more persons shall by agreement fight in any public place, to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray.

SEC. 116. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined in a sum not exceeding fifty dollars, or imprisoned in the county-jail not exceeding three months.

SEC. 117. If two or more persons shall meet to do an unlawful act upon a common cause of quarrel, and make advances towards it, they shall be guilty of a rout, and on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned in the county-jail not exceeding four months.

SEC. 118. If two or more persons actually do an unlawful act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent or tumultuous manner, the persons so offending shall be deemed guilty of a riot,[9] and on conviction shall severally be fined not exceeding two hundred dollars, or imprisoned in the county-jail not exceeding six months.

SEC. 119. If any judge, justice of the peace, sheriff, or other officer, bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined not exceeding five hundred dollars.

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(9) An unlawful assemblage is not necessary to constitute a riot under this section. *Dougherty* v. *The People*, 4 Scam. 180.

SEC. 120. If any person or persons shall in any newspaper or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious or abusive language for not accepting a challenge to fight a duel, such person or persons so offending, on conviction shall be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding three months. The publisher or printer of any such newspaper, handbill or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication, and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either: *Provided, however,* That the testimony given by any such witness shall in no case be used in any prosecution against such witness.

SEC. 121. A libel is a malicious defamation expressed either by printing, or by signs, or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt or ridicule. Every person whether writer or publisher convicted of this offence, shall be fined in a sum not exceeding five hundred dollars, or imprisoned in the penitentiary not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

DIVISION X. OFFENCES AGAINST THE PUBLIC MORALITY, HEALTH AND POLICE.

SEC. 122. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending, shall on conviction thereof be punished by a fine not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence,[10] but the same may be proved by such evidence as is admissible, to prove a marriage in other cases; and when such

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(10) This section has not the effect to exclude record evidence of the marriage. *Jackson* v. *The People,* 2 Scam. 232.

second marriage shall have taken place without this territory, cohabitation in this territory, after such second marriage, shall be deemed the commission of the crime of bigamy, and the trial in such cases may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the second marriage, and he or she not knowing such husband or wife to be living within that time. Also nothing herein contained shall extend to any person that is or shall be at the time of such second marriage divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

SEC. 123. If any man or woman being unmarried shall knowingly marry the husband or wife of another, such man or woman shall on conviction be fined not more than five hundred dollars, or imprisoned in the penitentiary not more than one year.

SEC. 124. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and on conviction shall be fined in any sum not exceeding two hundred dollars each, or imprisoned in the county-jail not exceeding six months. This offence shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy;[11] and for a second offence, such man or woman shall be severally punished twice as much as the former punishment, and for a third offence, treble, and thus increasing the punishment for each succeeding offence: *Provided, however*, That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution, by their intermarriage, if such marriage can be legally solemnized, upon the payment of the costs of such prosecution.

SEC. 125. Marriage between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, and cousins in the first degree, are declared to be incestuous and absolutely void. This section shall extend as well to illegitimate as legitimate children and relations.

SEC. 126. Persons within the degrees of consanguinity, within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or

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(11) In order to constitute the crime of cohabitation in open adultery, the parties must dwell together, openly and notoriously, upon terms as if the conjugal relation existed between them; proof of a single instance of illicit intercourse is not sufficient to warrant a conviction. *Searls* v. *The People*, 13 Ill. 597.

who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and, upon conviction, be punished by confinement in the penitentiary for a term not exceeding ten years.

SEC. 127. If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary, for a term not exceeding twenty years.

SEC. 128. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals; or shall keep open any tippling or gaming-house on the Sabbath day or night; or shall maintain or keep a lewd house or place for the practice of fornication; or shall keep a common, ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned in the county-jail not exceeding six months.

SEC. 129. If any person shall hereafter bring or cause to be brought or imported into this territory, for sale, or shall sell or offer to sell any obscene book, pamphlet or print, every such person shall, on conviction, be fined in a sum not less than twenty-five dollars, nor more than two hundred dollars.

SEC. 130. If any person shall keep any room, building, arbor, booth, shed or tenement of any description, to be used or occupied for gambling, or shall knowingly permit the same to be used or occupied for gambling; or if any person being the owner of any room, building, arbor, booth, shed or tenement of any description, shall rent the same to be used or occupied for gambling, the person so offending shall, on conviction thereof, be fined in any sum not less than thirty dollars nor more than five hundred dollars, or be imprisoned in the county-jail not less than ten days nor more than thirty days, or both, at the discretion of the court; and if the owner of any room, building, arbor, booth, shed or tenement of any description, shall know that any gaming tables, apparatus or establishment is kept or used in such room, building, arbor, booth, shed or tenement for gambling and winning, betting or gaining money or other property, and shall not forthwith cause complaint to be made against the person so keeping or using such room, building, arbor, booth, shed or tenement, he shall be taken, held, and considered to have knowingly permitted the same to be used and occupied for gambling. Every day for which any person or persons shall keep any house, room, building, tent or tenement of any description, to be used or occupied for gambling; and shall knowingly allow any such place to be used or occupied for gambling, shall be deemed and held to be a separate and distinct offence.

SEC. 131. If any person shall keep or exhibit any gaming table, establishment, device or apparatus to win or gain money or other property, or shall aid, assist or permit others to do the same, or if any person shall engage in gambling for a livelihood, or shall be without any fixed residence and in the habit and practice of gambling, he shall be deemed and taken to be a common gambler, and upon conviction thereof, shall be imprisoned in the county-jail not less than three months nor more than one year, and be fined in any sum not less than two hundred dollars nor more than five hundred dollars.

SEC. 132. If any person shall play at any game whatsoever, for any sum of money or other property of value, or shall make any bet or wager for any sum of money or other property of value, upon the result of such game, every such person shall, on conviction thereof, be fined in any sum not less than fifty dollars, nor more than one hundred and fifty dollars.

SEC. 133. If any person shall, by any device or pretence, entice, or tempt and prevail upon, or cause any minor to engage with such person, or with any other person or persons, in any game whatsoever, for any sum of money or property of value, or shall make any bet or wager with such minor, or cause the same to be done upon the result of any game, every such person shall, on conviction thereof, be deemed guilty of a misdemeanor, and fined in any sum not less than fifty dollars, nor more than one hundred and fifty dollars.

SEC. 134. Every person violating any of the provisions of the last preceding four sections, shall be deemed guilty of a misdemeanor, and shall be liable to indictment therefor; or the district attorney of any county may, if he shall elect so to do, present to the district court his information against any such offender or offenders, which information shall be in the name of the people of the territory of Colorado, and shall be signed by such district attorney and need not be otherwise authenticated. When any information shall be presented against any person as aforesaid, the trial shall proceed in the same manner and with like effect as if such person had been indicted by a grand jury. All fines collected upon any such indictment or information, shall be paid the one half thereof to the person giving information of the offence, and the remainder shall be paid into the school-fund of the county in which the offence was committed, and the person receiving the one half of such fine as informer shall be deemed and held to be a competent witness upon the trial of such offender.

SEC. 135. It shall be the duty of all sheriffs, coroners, constables, police officers of cities, and other officers charged with executing the laws of this territory, whenever it shall come to the knowledge of any such officer that any person has in his possession any cards, tables, checks, balls, wheels, or gambling devices of any nature or kind, used or kept for the purpose of gambling or playing at any game of chance; or that any cards, tables, checks, balls, wheels or gambling devices used or kept for the purposes aforesaid may be found in any place, to seize and take such cards, tables, checks, balls, wheels or gambling devices, and convey the same before some judge or justice of the peace of the county in which the same may be found; and it shall be the duty of such judge or justice of the peace to inquire of such witnesses as he shall summon to appear before him in that behalf, touching the nature of such gambling devices, and if such judge or justice shall ascertain that the same are used or kept for the purpose of gambling or playing at any game or games of chance, it shall be his duty to destroy the same. It shall be lawful for officers in executing the duties imposed upon them by this section, to break open doors for the purpose of obtaining possession of any such gambling devices; and all persons having possession of any of the articles aforesaid, shall be conveyed before some judge or justice of the peace of the county in which they may be found, and held or committed for appearance at the next term of the district court, to answer to any indictment or information which may be preferred against them or any of them.

SEC. 136. All contracts, promises, agreements, conveyances, securities and notes made, given, granted, executed, drawn, or entered into, where the whole or any part of the consideration thereof shall be for any money, property, or other valuable thing won by any gaming, or by playing at cards, or any gambling device or game of chance, or by betting on the side or hands of any person gaming, or for the reimbursing or paying any money or property knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting, shall be utterly void and of no effect. No assignment of any bill, bond, note or other evidence of indebtedness, where the whole or any part of the consideration for such assignment shall arise out of any gaming transaction, shall in any manner offset the defence of the person or persons making, entering into, executing or giving such instrument so assigned, or the remedies of any person interested therein.

SEC. 137. Every tavern-keeper who shall suffer or permit any game or games prohibited, or intended to be prohibited by this chapter, to be played in his tavern, or any out-house appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern-keeper for one year from such conviction.

SEC. 138. Every person who not having a legal license to keep a grocery, shall barter, sell or exchange any wine, rum, brandy, gin, whiskey, or other spirituous, vinous or mixed liquors to any person or persons, by a less quantity than one quart, shall, on conviction, be fined for every offence twenty dollars.

SEC. 139. Every tavern-keeper, or other retailer of spirituous liquors, who shall barter, sell or exchange any wine, rum, gin, brandy, whiskey or other spirituous liquors to any common drunkard, and every person, whether tavern-keeper or not, who shall sell, barter or exchange any wine, rum, gin, brandy, whiskey or other spirituous or mixed liquors, to any Indian or Indians in this territory, shall, on conviction, be fined in the sum of fifty dollars for each offence.

SEC. 140. If any person by himself, or his agent, shall knowingly sell, exchange, give, barter or dispose of any spirituous liquors or wine, to any of the troops of the United States or militia of this territory being or serving within the limits of this territory, except such supplies as may be ordered by the officers of the United States army, under the direction of the war department, such person, on conviction thereof, shall be imprisoned for a period not exceeding three months, or shall be fined in any sum not exceeding fifty dollars; and such person shall, upon such conviction, also forfeit any license he may have obtained authorizing him to retail spirituous or other liquors.

SEC. 141. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway or common street or alley of any town or village, or any public bridge or causeway, or public river or stream, declared navigable by law, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufacture or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any watercourse, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village or neighborhood thereabouts; every person so offending, shall, upon conviction thereof, be fined not exceeding one hundred dollars; and every such nuisance may, by order of the district court before whom the conviction may take place, be removed and abated by the sheriff of the proper county, and any inquest and judgment thereon had under the provisions of any law authorizing a writ of *ad quod damnum* shall be no bar to a prosecution under this section.

SEC. 142. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending shall be fined not exceeding two hundred dollars.

SEC. 143. It shall not be lawful for any person acting as territorial treasurer, territorial auditor, or any other territorial officer holding office in this territory, or any county treasurer, clerk, collector, or any other county officer holding office in this territory, either directly or indirectly, to buy or barter or trade for, sell or traffic in, any territorial or county scrip, county order, auditor's warrant or certificate of indebtedness or other evidence of indebtedness of the territory or any county therein, and such officer violating the provisions of this section shall be liable to indictment, and upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county-jail not exceeding three months, or shall suffer both such fine and imprisonment on the discretion of the court. It shall be no defence to any indictment hereunder that such warrant, order, scrip, certificate or other evidence hath not been countersigned and registered or either of them prior to such offence; but this section shall not be construed to forbid the sale by any officer of any such warrant, order or scrip issued to him for his personal services or otherwise.

SEC. 144. Any territorial or county treasurer who upon presentation of any auditor's warrant, territorial warrant, county order or the like evidence of indebtedness, for payment, shall refuse payment thereof, there being then in such treasury sufficient funds appropriated by law for the payment of such warrant, order or other like indebtedness, or where from by law, payment thereof ought to be made; and any county treasurer or collector of taxes, who upon presentation of any auditor's warrant, county order or other like certificate or evidence of indebtedness in payment of any taxes which may by law be paid therein, shall refuse to receive such order, warrant or certificate in payment of such taxes, every such officer so offending shall be liable to indictment, and upon conviction, shall be fined in any sum not exceeding five hundred dollars. This section shall extend to the deputies of every such treasurer and collector of taxes.

SEC. 145. If any person, number of persons or corporation in this territory, without special leave from the legislative assembly, shall emit or utter any bill of credit, make, sign, draw or indorse any bond, promissory note, or writing, bill of exchange or order, to be used as a general circulating medium, and in lieu of money or other currency, every such person or persons, or members of such corporation assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding five hundred dollars, or be imprisoned not exceeding one year.

SEC. 146. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States or of this territory, or any proclamation, advertisement or notification set up at any place in this territory by authority of the United States or of this territory, or by order of any court, such person, on conviction, shall be fined in a sum not exceeding one hundred dollars nor less than ten dollars, or imprisoned in the county-jail for a term not exceeding one month: *Provided*, That this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, advertisement or notification, after the time for which the same was by law to remain set up shall have expired.

SEC. 147. Any person able to work and support himself in some honest and respectable calling, not having wherewithal to maintain himself, who shall be found loitering, strolling about, frequenting of public places where liquor is sold, begging or leading an idle, immoral or profligate course of life, shall be liable to be indicted, or on the complaint, under oath, of any resident citizen of the county, arrested and carried before any justice of the peace, who shall examine said accused person, and hear the testimony in relation thereto, and if he shall be satisfied that he is a vagrant as above set forth, the fact having been established by a jury, which shall in all cases be summoned and sworn to inquire the truth thereof, whether the person be a vagrant or not; such justice shall make out a warrant under his hand and seal authorizing and requiring the officer having him in charge or custody to hire out such vagrant, within twenty-four hours, to the best bidder, by public outcry, or on notice given, as such justice may direct, for the highest price that can be had, for any term not exceeding four months; and such vagrant shall be subject to and governed by all the provisions of the act regulating apprentices, during the time for which he has been so hired. The money received for his hire shall, after deducting the costs, be, if he be without family, paid into the county treasury, but if he have a family, the same shall be appropriated for their benefit and use: *Provided*, That any such vagrant when arrested, and before judgment, may release himself by giving to said justice a bond with good security, conditioned that he will, for the next twelve months, be of good behavior and betake himself to some honest employment for support, and that he shall not, nor his family, become a county charge, through or by reason of his idleness, immorality or profligacy.

SEC. 148. If any person shall be found having upon him or her any pick-lock, crow, key, bit or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, warehouse, shop or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any goods and chattels, every such person so offending shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years.

SEC. 149. If any person or persons shall, within any city, town or village in this territory, whether the same is incorporated or not, carry concealed upon his or her person, any pistol, bowie-knife, dagger or other deadly weapon, such person shall, on conviction thereof before any justice of the peace of the proper county, be fined in any sum not less than five nor more than thirty-five dollars. The provisions of this section shall not be construed to apply to sheriffs, constables and police officers, when in the execution of their official duties.

SEC. 150. If any person shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county-jail not exceeding six months.

SEC. 161. Every male person above eighteen years of age who shall neglect or refuse to join the *posse comitatus* or the power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may have been issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons who after having been arrested or confined may have escaped from such arrest or imprisonment, or neglecting or refusing to aid and assist in preventing any breach of the peace, or commision of any criminal offence, being thereto lawfully required by any sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than twenty dollars nor more than two hundred dollars.

SEC. 152. If any person or persons shall open the grave or tomb, where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies or remains of any deceased person or persons from the grave or place of sepulture for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done, every such person or persons so offending shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars: *Provided,* That this section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority: *And provided, also*, That this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations or intimate friends to any other place of sepulture that he or she may think proper.

SEC. 153. If any person being an elector shall vote more than once at any election which may be held by virtue of any law of this territory, he shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 154. If any person shall, by bribery, menace, treating or other corrupt means or device whatsoever, either directly or indirectly attempt to influence any elector of this territory in giving his vote at any election, every person so offending and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this territory for five years.

SEC. 155. Any person who shall hereafter knowingly disturb the peace and good order of society, by labor or amusement, on the first day of the week, commonly called Sunday (works of necessity and charity excepted), shall be fined, on conviction thereof, in any sum not exceeding fifty dollars.

SEC. 156. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding fifty dollars.

SEC. 157. Any person who shall by menace, profane swearing, vulgar language, or any disorderly or immoral conduct, interrupt and disturb any congregation or collection of citizens assembled together for the purpose of worshipping Almighty God, or who shall sell or attempt to sell or otherwise dispose of ardent spirits or liquors, or any articles which may tend to disturb any worshipping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined in any sum not exceeding one hundred dollars: *Provided*, That this section shall not be so construed as to affect any person who may sell whiskey or any other ardent spirits at his own distillery, store or dwelling-house.

SEC. 158. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offences mentioned in the last three sections of this chapter, and may on view or upon information on oath, cause every such person having offended as aforesaid to be apprehended and brought before him to answer such charge.

SEC. 159. Any person who shall be accused with either of the offences specified in the four preceding sections, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than in said sections specified, upon which the justice before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor, which receipt shall be filed with the clerk of the county commissioners' court, after which the said fine or fines which may be thus deposited, shall be subject to the control of said court, and appropriated to the support of common-schools in the county where such conviction is had.

SEC. 160. The judgments rendered under the five preceding sections shall be subject to appeals as in cases of assault and battery and affrays, and shall be collected in the same manner.

DIVISION XI. OFFENCES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

SEC. 161. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands, or who being parties as aforesaid at any time, shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them as true, and done, had or made in good faith, or upon good consideration, or shall sell, alien or assign any of the lands, tenements, hereditaments, goods, chattels or other things before-mentioned to him, her or them, conveyed as aforesaid, or any part thereof, he, she or they so offending shall, on conviction, be fined not exceeding one thousand dollars.

SEC. 162. If any person, by false representations in writing of his own responsibility, wealth or mercantile correspondence and connection, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth or mercantile character, and by thus imposing on any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares, merchandise or any valuable thing, every such offender shall be deemed a swindler, and on conviction shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned in the county-jail not exceeding six months.

SEC. 163. If any person or persons shall knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same; every person so offending shall be deemed a cheat, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding one year, and shall be sentenced to restore the property, so fraudulently obtained, if it can be done: this section shall not apply to sales of property on a credit.

SEC. 164. If any person shall knowingly have, keep, or use any false or fraudulent scales, or weights, for weighing gold or gold dust, or any other article or commodity; every such person so offending shall, on conviction, be fined not exceeding five hundred dollars, or imprisoned in the county-jail not exceeding six months.

SEC. 165. The owner, manager, or agent of any species of quartz mill, arastra mill, furnace or cupel, employed in extracting gold from quartz, pyrites or other, minerals, who shall neglect or refuse to account for, or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites, or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, shall, on conviction, be fined in a sum not exceeding one thousand dollars, or be imprisoned in the penitentiary not exceeding one year.

SEC. 166. Any person or persons, who, after once selling, bartering or disposing of any tract or tracts of land, town-lot or lots, or executing any bond or agreement for the sale of any lands, or town-lot or lots, shall again, knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land or town-lot or lots, or any parts thereof, or shall, knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration; every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

SEC. 167. If any person shall knowingly sell, by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye, or other grain, he shall be deemed a common cheat, and, on conviction, shall be fined not less than two hundred dollars, and be imprisoned in the county jail not exceeding three months.

SEC. 168. That no warehouseman, wharfinger, or other person, shall issue any receipt, or other voucher, for any goods, wares, merchandise, grain or other produce or commodity, to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise, or other produce or commodity, shall have been *bona fide*, received into store by such warehouseman or wharfinger or other person, and shall be in store and under his control at the time of issuing such receipt.

SEC. 169. That no warehouseman, wharfinger, or other person, shall issue any receipt or other voucher, upon any goods, wares, merchandise, grain, or other produce, or commodity, to any person or persons, as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain, or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid.

SEC. 170. That no warehouseman, wharfinger, or other person shall issue any second receipt for any goods, wares, merchandise, grain, or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncancelled.

SEC. 171. That no warehouseman, wharfinger, or other person, shall sell, or encumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt.

SEC. 172. Any warehouseman, wharfinger, or other person, who shall violate any of the foregoing provisions, relating to warehousemen, shall be deemed a cheat, and be subject to indictment, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary of this territory not exceeding five years; and all and every person aggrieved may have and maintain an action on the case against the person or persons violating any of the foregoing provisions relating to warehousemen, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under the foregoing sections or not.

SEC. 173. Every president, cashier, treasurer, secretary, or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall wilfully and designedly sign, with intent to issue, sell, pledge, or cause to be issued, sold, or pledged, any false, fraudulent, or simulated certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the signing, issuing, selling, or pledging of which such president, cashier, treasurer, or other officer, or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, shall be adjudged guilty of felony; and every such person or persons shall be liable to indictment, and, on conviction, shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

SEC. 174. Every president, cashier, treasurer, secretary, or other officer, and every agent, attorney, servant, or employe of any bank, railroad, manufacturing, or other corporation, and every other person who shall, knowingly and designedly, or with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged, any false, fraudulent, or simulated certificate or other evidence of ownership, or of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation; every such person so issuing, selling, transferring, assigning, or pledging, or causing the same to be done, shall be adjudged guilty of felony, and shall be liable to indictment, and, on conviction, shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years as the jury shall determine.

SEC. 175. If any person keeping a public ranch or stable, shall use or allow to be used, without the consent of the owner, any horse, ox, mule, or ass, that shall be left with him to be ranched or fed, he shall forfeit to the owner, all ranch or stable fees that may be due upon such animal used, and the additional sum of five dollars for each day such animal may have been used; to be collected in the same manner as other debts.

DIVISION XII. FRAUDULENT AND MALICIOUS MISCHIEF.

SEC. 176. If any person shall wilfully and maliciously cut down, break down, level, demolish, or otherwise destroy or damage, any bridge, embankment, mill-dam, or ditch, being the property of another, or break or destroy the windows or doors of any dwelling-house or other house, belonging to or occupied by another, or shall set fire to or burn or destroy, or procure or cause to be burnt or destroyed, any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley, or other grain of any kind, being the property of another, or shall cut down, girdle, or destroy any fruit or shade-tree, standing or growing upon the premises of another, or cut, pull down, or destroy any gate, post, railing or fence, pull down, burn or destroy any pile or piles of wood, boards, or planks, or other lumber, being the property of another, or shall, for malice or mischief, overturn any cart, wagon or other carriage, or run them into sloughs, holes, or other places, or shall cut loose or set adrift any canoe, ferry, flat, skiff, boat, or other vessel, for mischief, or shall unlawfully, wantonly, wilfully and maliciously kill, wound, disfigure or destroy any horse, mare, filly, colt or gelding, or any bull, ox, steer, bullock, cow, heifer, or calf, or any sheep or lamb, or any hog, pig, or dog, or any other useful animal, being the property of another; every person so offending, on conviction, shall be fined not exceeding one hundred dollars, or be imprisoned in the county-jail not exceeding three months, or both.

SEC. 177. If any person shall, wilfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail or other place of confinement; every person so offending, shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

SEC. 178. If any person or persons shall, at any time hereafter, wilfully and intentionally, or negligently and carelessly set on fire or cause to be set on fire, any woods, prairies, or other grounds whatever, in the inhabited parts of this territory; every person so offending, shall, on conviction, be fined in any sum not less than twenty nor more than two hundred dollars: *Provided*, That this section shall not extend to any person who shall set on fire or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation, or enclosure, for the necessary preservation thereof from accident by fire, between the first day of March and the last day of November, by giving to his or her neighbors, two days' notice of such intention; and, *Provided, also*, That this section shall not be construed to take away any civil remedy which any person may be entitled to for any injury which may be done or received in consequence of such firing.

DIVISION XIII. CONSTRUCTION OF THIS CHAPTER AND DUTY OF COURTS.

SEC. 179. Every indictment or accusation of the grand jury shall be deemed sufficiently technical and correct, which states the offence in the terms and language of this code, or so plainly that the nature of the offence may be easily understood by the jury.[12] The commencement of the indictment shall be in substance as follows:

TERRITORY OF COLORADO, } ss.
——— County. }

Of the —— term of the —— court, in the year of our Lord, 18–,

The grand jurors chosen selected and sworn, in and for the county of ——, in the name and by the authority of the people of the territory of Colorado, upon their oaths, present, etc. [Here insert the offence and time and place of committing the same, with reasonable certainty.]

SEC. 180. All exceptions which go merely to the form of an indictment, shall be made before trial,[13] and no motion in arrest of judgment or writ of error shall be sustained for any matter not affecting the real merits of the offence charged in such indictment; no indictment shall be quashed for want of the words "with force and arms," or of the occupation or place of residence of the accused, nor by reason of the disqualification of any grand juror or grand jurors.

SEC. 181. Whenever any county is by law attached to another county for judicial purposes, and any offence or crime under the provisions of this chapter shall be committed in such county, the venue may be laid in either of said counties.

SEC. 182. Nothing in this chapter contained shall be so construed as to prevent the party or parties injured from having and maintaining a civil action for all damages and losses that he, she or they may have sustained in consequence of the commission of any criminal offence herein punished, and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby: *Provided, how-*

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(12) The offence of having in possession bank-bills with intent to pass the same, under the seventy-second section, need not be charged to have been committed feloniously. *Quigley* v. *The People*, 2 Scam. 301.

Nor need the offence of having in possession the instruments used in counterfeiting coin. *Miller* v. *The People*, 2 Scam. 233.

An indictment for an assault with intent to kill, not alleging any felonious or unlawful intent is fatally defective. *Curtiss* v. *The People*, Breese, 199.

But an indictment for an assault "with intent to kill *and murder*," is sufficient. *Curtiss* v. *The People*, 1 Scam. 288. *Nixon* v. *The People*, 2 Scam. 266.

(13) An omission in the indictment to state that it is found on the oaths of the jury, must be excepted to before trial. *Curtiss* v. *The People*, Breese, 197.

So of an objection that the grand jury were selected and impanelled in a manner not authorized by law. *Stone* v. *The People*, 2 Scam. 333.

And see *Connolly* v. *The People*, 3 Scam. 477. *Guykowski* v. *The People*, 1 Scam. 479.

ever, The record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages or losses sustained by the commission of any such criminal offence.

Sec. 183. The manner of inflicting the punishment of death shall be by hanging the person convicted, by the neck, until death, at such time as the court shall direct, not less than fifteen nor more than twenty-five days from the time sentence is pronounced, unless for good cause the court or governor may prolong the time.

Sec. 184. The court may order on the application of any respectable surgeon or surgeons, that the body of the convict shall after death be delivered to such surgeon or surgeons for dissection: *Provided*, The same shall not be claimed by any one related to the person executed, by consanguinity or affinity, or any friend desiring to give the body christian burial.

Sec. 185. This chapter shall extend to females committing any of the offences herein enumerated and defined, although they may not be expressly named. Infants under the age of twelve years shall, for all offences the penalty whereof is imprisonment, be punished by confinement in the county-jail for a period not exceeding two years; and in all cases whatsoever, where the punishment for an offence herein enumerated is imprisonment, and such punishment is discretionary in amount, the court before which conviction of such offence is had, shall fix the term of such imprisonment.

Sec. 186. It shall be and is hereby declared to be the duty of judges of the supreme and district courts, to make a special report to the legislature at such session thereof, of all such defects, omissions or imperfections in this code, as experience may suggest.

Sec. 187. Counts in larceny, and for embezzlement, and for receiving stolen goods, may be joined in the same indictment.

Sec. 188. All offences herein defined shall be prosecuted and punished as herein prescribed, and not otherwise, and all other offences may be punished by fine and imprisonment, in the discretion of the court: *Provided*, That the fine in no case exceed one hundred dollars, and the imprisonment six months.

Sec. 189. Whenever the punishment for any crime or misdemeanor is discretionary as to the amount or extent, the court may determine and affix the same, whether the punishment consists of corporeal punishment, imprisonment or fine.

Sec. 190. All fines imposed by virtue of any of the laws of this territory for the punishment of crimes and misdemeanors, where no other provision is made, shall when collected, be paid into the treasury of the county where the offence shall be tried, for the use of such county, unless otherwise expressly directed:

Provided, That nothing in this section contained, shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror.

SEC. 191. The benefit of clergy, appeals of felony and trials by battle, shall be and are hereby abolished.

SEC. 192. The court shall have power in all cases of conviction under this chapter, when any fine is inflicted, to order as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid, or otherwise legally discharged.

SEC. 193. Whenever any person shall be lawfully sentenced for crime by the judge of any district court in this territory, to imprisonment in the territorial prison, or to any county-jail, it shall be competent for the court awarding such sentence, to incorporate therein a provision that the person so sentenced shall be kept at hard labor during the term of such imprisonment, or for any specified portion thereof, as may be adjudged by the said court.

SEC. 194. It shall be the duty of the keepers of the said several prisons, whenever any person shall be sentenced to hard labor therein, and any mode of labor shall be provided, to cause such prisoner to be kept constantly employed during every day Sunday's excepted, and annually to account with the board of county commissioners for the proceeds of such labor; and in all cases it shall be lawful for the said jailer, with the consent of the county commissioners of the county in which such jail may be situated, to provide labor for such prisoners, if they deem it expedient and profitable so to do, either inside of the jail or outside of its limits.

SEC. 195. The keepers of said prisons shall respectively have power, with the consent of the county commissioners of said counties, from time to time, to cause such of the convicts under their charge as are capable of hard labor, to be employed on any of the public avenues, streets, highways, or other works, quarries or mines, in the county in which such prisoners shall be confined, or in any of the adjoining counties, upon such terms as may be agreed upon between the said keepers and the officers or other persons under whose directions such convicts shall be placed.

SEC. 196. Whenever any convict or convicts shall be employed under and by authority of the preceding section, he or they shall be in the legal care and custody of the person or persons to whom they shall be so employed; and he or they shall be well and securely chained and secured, and shall be subject to such regulations as the keepers legally charged with their custody shall from time to time prescribe.

SEC. 197. Whenever any prisoner who shall be sentenced by any of the courts aforesaid, to pay a fine and costs, or either, and to be committed until paid, shall be employed at hard labor pursuant to the foregoing provisions, he shall be allowed the sum of one dollar for each day's labor, and when he shall have earned the amount of such fine and costs, he shall be discharged.

SEC. 198. All sums of money arising from the wages or labor of any prisoner, pursuant to the provisions hereof, shall be placed to the credit of the county from which said prisoner comes, and which is liable to pay the expense of the detention of such prisoner.

SEC. 199. Every person convicted of felony shall from thenceforth be disqualified from holding any office of honor, trust or profit under the laws of this territory, or practising as an attorney in any of the courts thereof.

SEC. 200. Each and every person who may be convicted of the crime of rape, kidnapping, wilful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy, or the crime against nature, incest, larceny, forgery, counterfeiting or bigamy, shall be deemed infamous, and shall be thereafter incapable of holding any office of honor, trust or profit, or voting at any election, of serving as a juror, and of giving testimony.

SEC. 201. Whenever there are or shall be several charges against any person or persons for the same act or transaction, or for one or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offences, which may be properly joined, instead of having several indictments the whole may be joined in one indictment, in separate counts, and if two or more indictments are found in such cases, the court may order them consolidated.

SEC. 202. When any person or persons have been or shall be bound by recognizance to keep the peace, or for their good behavior, and for the appearance of the party in the district court, or before any justice of the peace, if the prosecutor shall fail to appear and prosecute, or if upon the hearing it shall appear that the prosecution was commenced maliciously, without reasonable or proper cause, the court may in its discretion give judgment against the prosecutor for costs of prosecution and defence.

DIVISION XIV. OF PROCESS, INDICTMENT, ARRAIGNMENT, TRIAL, JUDGMENT, EXECUTION AND WRIT OF ERROR.

SEC. 203. It shall be the duty of the district court when any indictment shall be found as a true bill, to make an order fixing the amount of bail, to each offence bailable by law, to be indorsed on the process by the clerk; and the sheriff, coroner or other officer who shall arrest the indicted person or persons, shall let such indicted person or persons to bail upon his or her or their entering into a recognizance, with one or more sureties, in the sum or sums specified on said process, which recognizance shall be made to the people of the territory, conditioned for the appearance of the indicted person or persons, on the first day of the next district court to be holden in and for such county, to answer said indictment, and not depart the court without leave, which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it; every recognizance so taken is hereby declared to be valid and binding, and shall not be set aside or adjudged insufficient for want of form.

SEC. 204. It shall be the duty of the clerks of the district courts of each county of this territory to issue processes of *capias* for the apprehension of all persons indicted in said courts, respectively, to be directed to the sheriff, coroner and constables of the county where such indicted person or persons shall then be. And it shall be the duty of the sheriff, or in case of his absence or inability, of the coroner or some of the constables of the county to which said *capias* is directed, to arrest the person or persons therein named, and let him or them to bail, where the offence is bailable; or if the offence be not bailable, or no sufficient bail be offered, then the officer making the arrest shall bring his, her or their bodies to the jail of the county where said *capias* is returnable, and deliver such accused person or persons together with the *capias* to the keeper of the jail, or shall hold such person or persons in custody to remain until discharged by due process of law. It shall also be the duty of any officer who shall take any recognizance in pursuance of this section, to return the same to the clerk by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners, by virtue of this section, to pass through any counties which lie in his route between the place of arrest and the county to which he is taking such prisoner or prisoners, and to lodge or deposit said prisoner or prisoners in any jail on his route for safe custody for one night or more as occasion may require. And it is hereby made the duty of the board of county commissioners of the county where such indictment may be found, to pay to the officer who shall bring any offender or offenders from another county his reasonable charge for such service: *Provided*, That nothing contained in this section or the preceding section shall prevent a *capias* being issued without such indorsement, returnable *instanter*, which *capias* shall authorize and require the accused to be arrested and immediately brought into court, when he or she shall be either committed, bailed or tried at the term at which the indictment is found.

SEC. 205. It shall be the duty of the clerks of the district courts to issue subpoenas, either on the part of the people, or the accused in any indictment, directed as in the preceding section, to any county in this territory, and every witness who shall be duly subpoenaed, and shall neglect or refuse to attend any district court pursuant to the requisitions of such subpoena, shall be proceeded against and punished for contempt of the court; and attachments against witnesses who live in a different county from that where such subpoena is returnable, may be served in the same manner as *capiases* are directed to be served out of the county from which they issue, in the preceding section.

SEC. 206. It shall not be necessary to issue a *venire* in any criminal case; and in all criminal cases where the panel of jurors shall be exhausted by challenges or otherwise, and whether any juror has been elected and sworn or not, it shall be competent for the court to order on their minutes a tales for any number of jurors not exceeding twenty-four, returnable *instanter*, out of which persons so ordered to be summoned it shall be lawful to impanel a jury for the trial of any criminal case; but should the tales ordered be insufficient, by reason of challenges or otherwise to form an impartial jury, the court may from time to time make such further orders for additional talesmen returnable *instanter*, until a full jury shall be obtained.

SEC. 207. No bill of indictment for false imprisonment or wilful and malicious mischief, shall be found a "true bill" by any grand jury, unless a prosecutor is indorsed thereon by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer in the necessary discharge of his duty, in which case it shall be stated at the end of the indictment how the same is found, and then no prosecutor shall be required; but in cases where the prosecutor is indorsed on the indictment, and the defendant shall be acquitted on the trial, the petit jury acquitting such defendant shall find in addition to the verdict of "not guilty," whether the prosecutor had acted maliciously by instituting the prosecution or not; and whenever the petit jury shall return with a verdict of "not guilty," that the prosecutor had acted maliciously in the premises, the court shall enter judgment for costs against the prosecutor, including a fee of twenty-five dollars to the prosecuting attorney, and award execution for the same as is done in civil cases: *Provided*, That nothing herein contained shall render the prosecutor incompetent to be a witness either before a grand or petit jury.

SEC. 208. Every person charged with murder or other felonious crime, shall be furnished previous to his arraignment with a copy of the indictment, and a list of the jurors and witnesses. In all other cases he or she shall at his or her own request, or at the request of his or her counsel, be furnished with a copy of the indictment, and a list of the jurors and witnesses.[14]

SEC. 209. Upon the arraignment of a prisoner it shall be sufficient without complying with any other form, to declare orally by himself or herself, or his or her counsel, that he or she is not guilty, which declaration or pleas shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment and such plea, shall constitute the issue between the people of the territory and the prisoner; and if the clerk should neglect to insert in the minutes the said arraignment and plea, it may and shall be done at any time by order of the court, and then the error or defect shall be cured.

SEC. 210. In all cases where the party indicted shall on being arraigned obstinately stand mute, or refuse to plead, standing mute or refusing to plead shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of "not guilty" to be entered on the minutes, and the trial, judgment and execution shall proceed in the same manner as it would have done had the party pleaded "not guilty."

SEC. 211. In all cases where the party indicted shall plead "guilty," such plea shall not be entered until the court shall have fully explained to the accused the consequences of entering such plea, after which, if the party indicted persists in pleading "guilty," said plea shall be received and recorded, and the court proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possesses any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation and mitigation of the offence.

SEC. 212. Every person arraigned for any crime punishable with death, shall be admitted on his trial to a peremptory challenge of ten jurors, and no more; and every person arraigned for any offence that may be punished by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of six jurors; and in all other criminal cases

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(14) If the defendant demand a copy of the indictment, it is error to compel him to plead before such copy is furnished. *McKenney* v. *The People*, 2 Gilm. 540.

The court may in its discretion permit witnesses to be sworn on the part of the people, whose names are not upon the indictment. *Gardner* v. *The People*, 3 Scam. 90. *Gates* v. *The People*, 14 Ill. 434.

Nor, it seems, is it necessary that previous notice of an intention to call the additional witnesses should be given, unless something appear to show that the prisoner is surprised. *Perry* v. *The People*, 14 Ill. 499.

the defendant shall be allowed a peremptory challenge of three jurors.[15] The attorney prosecuting on the part of the people, shall be admitted to a peremptory challenge of the same number of jurors that the accused is entitled to, and no more.

SEC. 213. In no case shall the right to a trial by jury *de mediatate linguæ*, be allowed in criminal prosecutions.

SEC. 214. When an offence shall be committed on a county line, the trial may be in either county divided by such line; and where any offence shall be committed against the person of another, and the person committing the offence shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either county.

SEC. 215. In all complaints exhibited before the grand jury of any county, they shall hear the witnesses on behalf of the people only, and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of perjury, when at least two witnesses to the same fact shall be necessary, and on finding a bill of indictment, at least sixteen of the grand jurors shall be present, and at least twelve of them shall agree to the finding; the foreman of the grand jury may swear or affirm all witnesses that may come before the grand jury.

SEC. 216. All trials for criminal offences shall be conducted according to the course of the common-law, except when this chapter points out a different mode, and the rules of evidence also of the common-law shall, unless changed by this chapter, be binding on all courts and juries in criminal cases.

SEC. 217. When the jury shall retire to consider their verdict in any criminal case, a constable or other officer shall be sworn or affirmed to attend the jury to some private and convenient place, and to the best of his ability keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed upon a verdict, and he shall not speak to them, except to ask them if they have agreed upon a verdict, nor suffer others to speak to them, and that when they shall have agreed on their verdict, he will return with them into court:[16] *Provided, however*, That in every case of misdemeanor only, if the prosecutor for the people and the person on trial, by himself or counsel, shall agree, which agreement shall be entered on the minutes of the court, to dispense with the attendance of an officer upon the jury, or that the jury,

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(15) Where several are tried upon the same indictment, at one and the same time, each prisoner may challenge the full number of jurors, without reference to challenges by others. *Maton* v. *The People*, 15 Ill. 539.

(16) As to the effect of this section, and a failure to observe its provisions. *McIntire* v. *The People*, 38 Ill. 514. *Nomaque* v. *The People*, Breese, 109. *The People* v. *Green*, 16 Ill. 234.

As to the effect of allowing the jury to separate, in criminal cases. *Jumpertz* v. *The People*, 21 Ill. 375. *Gibbons* v. *The People*, 23 Ill. 520. *Reins* v. *The People*, 30 Ill. 256.

when they have agreed upon their verdict, may write and seal the same, and after delivering the same to the clerk, may separate; it shall be lawful for the court to carry into effect any such agreement, and receive any such verdict so delivered to the clerk, as the lawful verdict of any such jury.

SEC. 218. If any officer sworn to attend upon a jury shall knowingly violate his oath or affirmation, or shall so negligently perform his duties that the jury shall separate without leave of the court, or obtain food or drink, except water, or if any person not belonging to the jury shall hold conversation with any of the jury, every person and officer so offending shall be punished for contempt of court, by fine or imprisonment, or both, in the discretion of the court.

SEC. 219. In any case where any person or persons shall be convicted of any crime or misdemeanor, in this chapter specified, or of any at common-law,[17] the court shall give judgment that the offender or offenders so convicted shall pay the costs of prosecution.

SEC. 220. The property, real and personal, of every person who shall be convicted of any of the offences punished by this chapter, shall be bound, and a lien is hereby created on the property, both real and personal, of every such offender, from the time of his or her arrest, if he or she be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the fines and costs of prosecution;[18] and it shall be the duty of the clerk of the district court, at the end of each term, to issue one execution for every fine which shall have been imposed during the term, and which remains unpaid, and for all costs of conviction in criminal cases, in which execution shall be stated the day when the arrest was made or indictment was found, as the case may be, which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all the estate, real and personal, which the defendant or defendants possessed as his or her own real or personal estate, on the day mentioned in such execution, and any property, real and personal, subsequently acquired by him or her, which property so to be levied upon shall be advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property under such execution, that the body is in custody for such fine and costs.

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(17) Offences not enumerated in the code are punishable as at common-law. *Smith* v. *The People*, 25 Ill. 24.

(18) The lien provided by this section extends through the whole of the day upon which the arrest is made, or the indictment, in case the indictment precedes the arrest, is found. *Hitchcock* v. *Roney*, 17 Ill. 231.

The lien is not limited to the county in which the indictment is found; and is not affected by change of the venue. *Ibid.*

SEC. 221. It shall and may be lawful for any person or persons convicted of any criminal offence to replevy the judgment for the fine and costs, or the costs only, when no fine shall be imposed, by such convicted person or persons with one or more good and sufficient free-holders entering into a recognizance before the district court, to the people of this territory, for the payment of such fine and costs, or costs only, within five months of the date of the acknowledgment, which recognizance so taken is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same, and upon the breach thereof the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements of the persons who entered recognizance, in the same manner as if it had been a judgment of the court, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution. In all cases where the person or persons convicted as aforesaid shall replevy the fine and costs, as is provided in this section, then no execution shall issue for said fine and costs, as is prescribed in the next preceding sections; and further, such person or persons after replevying the fine and costs as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment in consequence of any conviction, unless where imprisonment is by this act made a part of the punishment; in that case, such convicted person or persons shall be discharged from his or her or their imprisonment at the expiration thereof, if he, she or they have replevied the fine and costs as aforesaid.

SEC. 222. Executions for fines and costs of prosecutions and on recognizances taken in pursuance of the preceding sections, may be issued into any county in this territory.

SEC. 223. Whenever it shall be made satisfactorily to appear to the district court, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution for any criminal offence, hath no estate whatever wherewith to pay such fine and costs, or costs only, it shall be the duty of the said court to discharge such person from further imprisonment for such fine and costs, which discharge shall operate as a complete release of such fine and costs: *Provided*, That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned as part of his or her punishment.

SEC. 224. In all cases of bail for the appearance of any person or persons charged with any criminal offence, the security or securities of such person or persons may, at any time before judgment is rendered, upon *scire facias* to show cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken;[19] and it shall be the duty of such sheriff, on such surrender and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons so charged as aforesaid into custody, and by writing acknowledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

SEC. 225. In the trial of any person or persons for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exceptions rendered to the court during the progress thereof: *Provided*, That the truth of the case be fairly stated in such bill of exceptions; and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become to all intents and purposes a part thereof.

SEC. 226. The party aggrieved by manifest and material error appearing of record in any capital prosecution by indictment, may be relieved by writ of error upon complying with the following terms, to wit: The party complaining that error has been committed, shall obtain a certified copy of the record from the clerk, and from the judge of the district court, or from the person who acted as prosecuting attorney on the trial, a certificate expressive of an opinion that said record contains a full and true history of the proceedings on said trial, which record together with an assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof, in vacation; and if after inspecting such transcript the court or justice aforesaid shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted by order indorsed on the back of said transcript; the allowance of such writ of error shall be sufficient authority to the clerk of the supreme court to issue a *supersedeas* to stay the execution of the sentence of death, but not the discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall

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(19) The surety is clothed with full power to perform his undertaking in the recognizance; he may seize the body of the defendant upon any day, Sunday not excepted, and at any place within the State; if the principal be detained by an arrest upon process out of another court, the surety may have the writ of *habeas corpus* to compel the production of his body in order to its surrender. *Brown* v. *The People*, 26 Ill. 34. *Mix* v. *The People*, 26 Ill. 30.

The discharge of the surety has not the effect to discharge the principal. *Weise* v. *The People*, 19 Ill. 646. *McGuire* v. *The State*, 5 Porter, 65.

be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned, at the time specified.

SEC. 227. Writs of error in all criminal cases not capital, shall be considered as writs of right, and issue of course, but no writ of error shall be a *supersedeas*, unless the supreme court or one of the justices thereof, in vacation, after inspecting a copy of the record, certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is reasonable cause for allowing a writ of error; in such case the writ shall be granted by order indorsed on the back of such record, in which case the clerk of the supreme court shall issue a *supersedeas*, which shall have the effect to stay the execution of the sentence, but not to discharge the prisoner from custody. If the party applying for such writ of error shall at the time be in custody, under the authority of the judgment prayed to be superseded, and the said court or justice shall be of opinion that the party obtaining such writ of error ought to be bailed until the determination of such writ of error, the said supreme court or justice may make an order to discharge such prisoner from custody, upon the prisoner entering into a recognizance to the people of the territory, before the sheriff of the county where he or she shall be imprisoned, in such sum and with such security as said court or justice shall prescribe, which recognizance shall be conditioned that the prisoner will appear in the next district court to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the district court, on the first days, until the determination of such writ of error, and that he will be present and submit to such order as the supreme court shall make in the premises, and will not at any of the terms of said court in which he shall be bound to appear by said recognizance, depart the court without leave. The recognizance so taken shall be returned to the next district court, and there entered of record, and such proceedings may be thereon had, in case of a breach of the conditions of such recognizance, as shall be according to the course of the common-law: *Provided however*, That in cases where corporeal punishment is inflicted the prisoner shall in no case be bailed; upon the affirmance of any judgment brought into the supreme court by virtue of this section the said court shall order and direct the district court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

SEC. 228. Until such time as there shall be established and procured a penitentiary in this territory for the confinement of persons convicted of offences under this chapter, the court shall have power, on passing sentence, to provide that such person shall be confined for such term as may be fixed therefor in the county-jail where the offence was committed, and if there be no jail in such county, then the court shall provide for such confinement in some other county-jail in the territory, and the county in which said offence was committed, shall pay the expenses of such confinement.

DIVISION XV. LIMITATION OF INDICTMENTS AND PENAL ACTIONS.

SEC. 229. No person or persons shall be prosecuted, tried or punished for any offence denominated by the common-law felony, (murder, arson and forgery excepted), unless the indictment for the same shall be found by a grand jury within three years next after the offence shall have been done or committed, nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offence below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information or action for the same shall be found or instituted within one year and six months from the time of committing the offence or incurring the fine or forfeiture: *Provided*, That nothing herein contained shall extend to any person fleeing from justice: *And provided, also*, That where any suit, information or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *Provided also*, That where any indictment, information or suit shall be quashed, or the proceedings on the same set aside or reversed on writ of error, the time during the pendency of such indictment, information or suit so quashed, set aside or reversed, shall not be reckoned within this statute so as to bar any new indictment, information or suit for the same offence.

DIVISION XVI. GENERAL PROVISIONS.

SEC. 230. The judges of the supreme and district courts in their respective districts, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions as herein designated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offences, or for the preservation and observance of the peace. They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require; and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person in this territory, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame; and the said judge or justice of the peace, being satisfied by the oath of one or more witnesses of his or her bad character, or that he or she had used threats as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior toward all the people of this territory, and particularly toward the individual threatened. If any person against whom such proceedings are had, shall fail to give a recognizance, with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county until such security be given, or until the next term of the district court. Such judge or justice of the peace shall also take recognizances for the appearance of all witnesses at such court. All recognizances to be taken in pursuance of this section, shall be returnable to the next district court to be holden in the proper county, where all such recognizances shall be renewed or dismissed, as the said district court shall upon the examination of the witnesses deem to be just and right; and where the person or persons committed are in jail at the sitting of such district court, the court shall examine the witnesses, and either continue the imprisonment, bail the prisoner, or discharge him or her, as to the said court shall appear to be right, having due regard for the safety of the citizens of this territory.

SEC. 231. When any felonious offence shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall forthwith be made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons who shall be by any of them commanded or summoned for that purpose; every such officer who shall not do his duty in the premises, shall be punished by fine in a sum not exceeding one hundred dollars.

SEC. 232. It shall be lawful for any of the aforenamed judges or justices of the peace, upon oath or affirmation being made before him, that any person or persons have committed any criminal offence in this territory, or that a criminal offence has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant under his hand, commanding the officer or person charged with the execution thereof, to arrest the person or persons so charged, and bring

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taking the same, and delivered to the clerk of the district court on or before the day mentioned therein for the appearance of the witness or accused therein bound.[20] Recognizances taken into courts of record, need not be signed or certified as aforesaid. Recognizances for assaults, batteries and affrays shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

SEC. 235. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for murder or other offence punishable with death, or for not entering into a recognizance to appear and testify, any judge, or any two justices of the peace, may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to indorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

SEC. 236. When a charge shall be exhibited upon oath before any judge or justice of the peace, against any person, for a criminal offence, it shall be the duty of the judge or justice of the peace before whom the charge shall be made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners and constables within the territory; and it shall be the duty of any sheriff, coroner or constable into whose hand any such warrant shall come, to execute the same within their respective counties, and if the offender shall be found therein, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any such sheriff, coroner or constable, or other person called to the assistance of such sheriff, coroner or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the adjoining county, such sheriff, coroner or constable, or other person, may pursue such offender into the adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

SEC. 237. Any judge or justice of the peace issuing any such warrant, may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the territory, by apprehending and conveying such offender before the judge or justice issuing such warrant, or before some other

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(20) A recognizance taken by a judge at chambers, does not become a record until certified the court; and unless so certified no *scire facias* can issue thereon. *Raysor* v. *The People*, Ill. 194.

justice of the same county, and all sheriffs, coroners and constables and others, when required, in their respective counties, shall aid and assist in the execution of such warrant.

SEC. 238. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposit such prisoner or prisoners in any jail on his or their route, for safe custody, for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent, under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer, to receive and detain such prisoner or prisoners, until he, she or they obtain bail, if the offence be bailable, or be otherwise discharged by due course of law.

SEC. 239. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offence, or warrant of commitment, or search-warrant, that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant under the hand of the judge or justice of the peace, shall be as valid in law as if a seal were affixed. And no person shall be discharged on *habeas corpus* from his imprisonment merely by reason of defect of legal precision or want of technical form in the warrant of commitment, but the court or judge awarding such *habeas corpus* shall, in all such cases, proceed and determine as if the *mittimus* had all legal and technical form: *Provided*, Sufficient appears on the face of the *mittimus* to ascertain for what crime or offence such prisoner or prisoners shall have been committed.

SEC. 240. It shall be lawful for any judge or justice of the peace, upon complaint made before him, upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property are or is concealed in any dwelling-house, out-house, garden, yard or other place or places, to issue a warrant, under his hand, commanding every such dwelling-house or place to be searched in the daytime; and if any of the goods described in any such warrant be found therein, then that the said goods be seized or brought before the judge or justice issuing said warrant. If upon examination of witnesses before the judge or justice of the peace who issued such warrant, it shall be determined by such judge or justice of the peace that the goods so brought before him have been stolen, it shall be the duty of such judge or justice, either to keep possession of, or to deliver, or cause to be delivered, such goods, to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next district court after the goods shall be seized, and an action shall not be commenced against the person or persons in whose possession such goods shall have been found, for the recovery thereof, within one month after the district court shall have been held after such seizure, the said district court shall, at their next session, order such goods to be redelivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may at the time be. In case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were taken.

SEC. 241. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offence is not by law bailable, to write on the warrant of commitment, the names and residences of the principal witnesses by whom the crime was proved before said judge or justice.

SEC. 242. Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall indorse on the said copy the names of the witnesses written thereon as aforesaid; and any justice or judge who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer who shall neglect to indorse the name of said witness or witnesses on any copy of said commitment, each justice, judge, sheriff or jailer offending in the premises, shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name of, and for the use of, any person who shall sue for the same in any court of record.

SEC. 243. Whenever a *habeas corpus* shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpœna to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named, to appear before such judge or court, at the time and place when and where such *habeas corpus* shall be returnable; it shall be the duty of such sheriff to serve such subpœna, if it be possible, in time to enable such witness or witnesses to attend; it shall be the duty of the witness or witnesses thus served with said subpœna, to attend and give evidence before the judge or court issuing the same, on pain of being deemed guilty of a contempt of court, and proceeded against accordingly by said judge or court.

SEC. 244. On the hearing of any *habeas corpus* issued as aforesaid, it shall be the duty of the judge or court who shall hear the same, to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offence named in the warrant of commitment as aforesaid, whether said offence be technically set out in said commitment or not.

SEC. 245. Exceptions taken to opinions or decisions of any court in this territory, refusing motions in arrest of judgment, for new trials or for continuances, or change of venue, shall be allowed in criminal cases and in penal and *qui tam* actions; and the party excepting to such decisions may assign the same for error, in the same manner as in civil cases.

SEC. 246. An act entitled an act concerning criminal jurisprudence, approved November 5, 1861, is hereby repealed: *Provided*, That nothing in this section shall be so construed as to affect any indictment or suit now pending and undetermined in any court of this territory, and which was found or instituted under the provisions of the act hereby repealed; but all such indictments or suits shall be prosecuted to final judgment under the provisions of the act hereby repealed.

An act relating to Intoxicating Liquors on days of election.

[*Approved January* 8, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 247. (I.) If any innkeeper of any hotel, tavern, saloon, or other place, whether licensed to vend spirituous, vinous, fermented or malt liquors or not, or any other person shall barter, sell or give away to any person or persons any spirituous, vinous, fermented or malt liquors, between the hours of sunrise and sunset on the day of any general election in this territory, or within any incorporated city in this territory, between the hours above-named, on the day of the election of the mayor thereof, shall upon conviction thereof, before any justice of the peace or court of competent jurisdiction, forfeit and pay a fine of not less than ten nor more than one hundred dollars for the first offence, and for a second offence, a fine of not less than fifty, nor more than two hundred dollars.

SEC. 248. (II.) This act shall not apply to wholesale grocers or merchants who may barter or sell spirituous, vinous or malt liquors on the days mentioned in the preceding section, to persons or firms in quantities greater than twenty gallons.

An act concerning Fines and forfeited Recognizances.

[*Approved January* 8, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 249. (I.) That all fines imposed by virtue of any of the laws of this territory for the punishment of crimes and misdemeanors, and all forfeited recognizances, shall when collected be paid into the treasury of the county where the offence shall be tried, for the use of such county, except in cases of change of venue, in which cases the money so collected shall be paid into the treasury of the county from which the change was made.

SEC. 250. (II.) It shall be the duty of the county attorney of the proper county to collect by suit or otherwise, all forfeited recognizances now due, as well as those that may hereafter become due, and pay over the same to the county treasurer, as provided for in the first section of this act.

SEC. 251. (III.) Nothing herein contained shall be construed to change the forms of recognizances or the mode of procedure to collect the same, on the receipt of a part of said fines by the informer, as now provided for by the laws of the territory.

SEC. 252. (IV.) In every case where a portion of a fine imposed upon a defendant by any statute, is now or shall be authorized to be paid to the informer in said case, and neither the court, grand or petit jury, shall indicate who is the informer, the whole of said fine shall be paid into the treasury of the county as is hereinbefore provided in this act.

SEC. 253. (V.) All fines heretofore paid by any defendant in cases where by law a portion of said fine was by the statute appropriated to the informer, and no informer was known to the court, that portion of the fine due to said informer, now in the hands of any justice of the peace, probate court or clerk of the district court, shall be paid into the treasury of the county wherein the conviction was had, and the said fine or fines were paid, and in case the office of any justice of the peace, probate judge or clerk of the district court, into whose hands any such fines may have been paid, shall have expired, it shall be the duty of the attorney acting for the county into whose treasury the said fines are by this act directed to be paid, to demand the payment of said fines so remaining unpaid, and in case of refusal or neglect to pay the same, suit may be instituted in the name of the county for the recovery of the same in any court of competent jurisdiction.

SEC. 254. (VI.) All acts and parts of acts in conflict with this act, are hereby repealed.

An act to amend an act entitled an act concerning Criminal Jurisprudence.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 255. (I.) That larceny, or the buying or receiving goods or other things obtained by larceny, burglary or robbery, knowing the same to have been so obtained, in all cases where the money or the value of the thing stolen, bought or received, does not exceed thirty dollars, is hereby declared to be a misdemeanor.

SEC. 256. (II.) Every person who shall be convicted as hereinafter provided, of larceny, or of buying or receiving goods or other things obtained by larceny, burglary or robbery, knowing the same to have been so obtained, in all cases where the money or the value of the thing stolen, bought or received does not exceed thirty dollars, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment and hard labor for a term not exceeding sixty days, or both such fine and imprisonment.

SEC. 257. (III.) In all cases declared misdemeanors by section one of this act, any justice of the peace of the county in which the offence is committed, may upon complaint being made as is now required by law, issue a warrant directed to any proper officer of his county for the arrest of any person so charged with any such misdemeanor, and upon the arrest of such person the justice of the peace before whom such person is brought for trial, shall hear and determine the cause, and if he find the accused guilty, shall assess the fine and fix the term of imprisonment, or both, as prescribed in section two of this act.

SEC. 258. (IV.) The justice of the peace shall in all trials held under the provisions of this act, keep a brief record of the proceedings in his docket-book, and whenever a fine is imposed, either as the whole or a part of the judgment of the justice, he shall forthwith proceed to render judgment thereon for the amount of said fine, and all costs in the case, and such defendant shall remain in the custody of the officer until such fine be paid.

SEC. 259. (V.) Upon the rendition of such judgment for fine and costs as is provided for in section four of this act, the justice of the peace shall issue execution for the same, which may be levied upon any personal property not exempt by law, of the person so convicted, which said property shall be sold for whatever it will bring in cash, after giving notice of the time and place of such sale, as in civil cases.

SEC. 260. (VI.) If the officer shall return on such execution that the person so convicted has no goods and chattels whereof to make the said fine and costs, the justice shall issue a *capias* against the body of the person so convicted, and the officer shall arrest such person, and he shall be punished by imprisonment and hard labor forty-eight hours for each and every five dollars of said fine and costs, and the justice shall indorse the term of said last-mentioned imprisonment on the *capias*.

SEC. 261. (VII.) If any person accused of any of the offences declared misdemeanors by this act shall confess himself guilty, the justice shall assess the fine or fix the term of his imprisonment and hard labor, or both, and proceed to have the fine collected, and the judgment of the justice carried into effect as hereinafter provided.

SEC. 262. (VIII.) Appeal may be taken to the district court by the accused when convicted under this act, in the same manner and on the same terms as is now provided by law for appeals in cases of assault, assault and battery, and affray.

SEC. 263. (IX.) Any person charged with any offence specified in this act, may be prosecuted either under the provisions of this act, or under the provisions of an act entitled "An act concerning criminal jurisprudence," passed November 5, 1861, and the amendments to the said last-mentioned act.

SEC. 264. (X.) It shall be the duty of the county commissioners of the proper county to furnish work either in the county-jail or elsewhere in the county, of a suitable and proper kind for all persons convicted under this act, and the said county commissioners shall make and prescribe all necessary and proper rules and regulations concerning the working of said convicts as hereinbefore provided for; and in case the said commissioners fail to provide differently, the county-jail shall be the place of imprisonment.

SEC. 265. (XI.) Each and every person who shall be convicted of any of the misdemeanors named in section one of this act, shall be deemed infamous, and shall be thereafter incapable of holding any office of honor, trust or profit, of voting at any election, and of serving as a juror.

Prior Statutes Repealed. An act concerning Criminal Jurisprudence. Approved November 5, 1861. Laws 1861, p. 290.

An act to prevent the sale of Intoxicating Liquors to soldiers. Approved September 28, 1861. Laws 1861, p. 34.

An act to prevent Ranchmen and Stable-keepers from using stock left with them, without the consent of the owners. Approved November 6, 1861. Laws 1861, p. 105.

An act to prevent and punish resistance to officers. Approved November 5, 1861. Laws 1861, p. 337.

An act to amend an act entitled an act concerning Criminal Jurisprudence. Approved August 15, 1862. Laws 1862, p. 56.

An act to prevent the carrying of concealed deadly weapons in the cities and towns of this territory. Approved August 14, 1862. Laws 1862, p. 56.

An act to prevent the sale of Intoxicating Liquors to soldiers. Approved August 15, 1862. Laws 1862, p. 57.

An act to suppress gambling and gambling-houses. Approved March 2, 1864. Laws 1864, p. 76.

An act limiting the operation of an act entitled an act to suppress gambling and gambling-houses, Approved March 2, 1864, and repealing parts of section thirty-one of an act entitled an act to incorporate the city of Denver. Approved March 11, 1864. Approved February 9, 1864. Laws 1865, p. 72.

An act to suppress gambling and gambling-houses. Approved January 20, 1866. Laws 1866, p. 56.

An act to amend an act concerning Criminal Jurisprudence. Approved January 8, 1867. Laws 1867, p. 61.

CHAPTER XXIII.

DESCENTS AND DISTRIBUTIONS.

SECTION
1. Real and personal estate, not otherwise disposed of or limited, of any intestate, to descend to surviving husband or wife, or if intestate leave child or descendant of any child, one half to surviving husband or wife, one half to children or descendants; dower and courtesy abolished; husband and wife have no other share in each other's estates than as herein provided; in other cases, estate descends, *first*, to children and descendants of children, *second*, to parents, brothers and sisters, and their descendants, *third*, to grandparents, uncles and aunts, and their descendants, *fourth*, to nearest lineal ancestor, and their descendants.
2. Posthumous children or descendants of intestate to inherit.
3. Children of half-blood to inherit; collateral relatives of half-blood how to inherit.

SECTION
4. Advancements to be charged against distributive share.
5. What not deemed an advancement.
6. Alienage of intestate not to impair descent.
7. Illegitimate children to inherit if parents afterward marry, and the children be recognized by father.
8. Divorce not to affect right to children to inherit.
9. Probate judges, and administrators to distribute estates.
10. Descent and distribution of bastard's estate.
11. Certain personal property to be allotted to widow, and not subject to debts.
12. Widow may relinquish the articles specified; if intestate do not leave such articles, widow may have allowance in money or other personal property.
13. Right of widow to her separate property not affected by renouncing or failing to renounce provisons of will.

SECTION 1. Whenever any person having title to any real estate, or property having the nature or legal character of real estate, or personal estate, undisposed of or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary, to his kindred, male and female, subject to the payment of his debts in the following course and manner, namely:

If such intestate leave a husband or wife and children, or the descendants of any children, him or her surviving, one half of such estate shall descend to such surviving husband or wife, and the residue thereof to such surviving children and descendants of children as hereinafter limited; if such intestate leave a husband or wife, and no child nor descendants of any child, then the whole of the estate of such intestate, real and personal shall descend to and vest in such surviving husband or wife as his or her absolute estate, subject to the payment of debts as aforesaid.

Dower and the tenancy by the courtesy are abolished, and neither husband nor wife shall have any share in the estate of the other, save as herein provided.

Except in the cases above enumerated, the estate of every intestate shall descend and be distributed as follows:

First, To his children surviving, and the descendants of his children who are dead, the descendants, collectively, taking the share which their parent would have taken if living.

Second, If there be no children nor their descendants, then to his father, mother, brothers and sisters, and to the descendants of brothers and sisters who are dead (the descendants, collectively, taking the share their parent would have taken if living), in equal parts.

Third, If there be no children nor their descendants, nor father, mother, brothers, sisters nor descendants of deceased brothers or sisters, nor husband nor wife living, then to the grandfather, grandmother, uncles, aunts and their descendants (the descendants taking, collectively, the share of their immediate ancestors), in equal parts.

Fourth, And if none of the relatives above enumerated be living, then to the nearest lineal ancestors and their descendants (the descendants, collectively, taking the share of their immediate ancestor), in equal parts.

SEC. 2. All posthumous children or descendants of the intestate, shall inherit in like manner as if born in the lifetime of the intestate; but no right of inheritance shall accrue to any person other than the children or descendants of the intestate, unless they are in being, and capable in law of taking as heirs, at the time of the intestate's death.

SEC. 3. Children and descendants of children, of the half-blood, shall inherit the same as children and descendants of the whole-blood; but collateral relatives of the half-blood, shall inherit only half the measure of collateral relatives of the whole-blood, if there be any of the last-named class living.

SEC. 4. Where any of the children of the intestate shall have received, in his lifetime, any real or personal estate, by way of advancement, and the other heirs desire it to be charged to him, the probate judge shall cite the parties to appear before him, shall hear proof upon the subject, and shall determine the amount of such advancement or advancements to be thus charged.

SEC. 5. The maintenance, education, or supply of money, to a child under the age of majority, without any view to apportion or settlement in life, shall not be deemed an advancement, under section four of this chapter.

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SEC. 12. When an inventory shall have been made of the personal estate of any testator or intestate, the widow may relinquish her right to any or all the specific articles of property allowed to her by the preceding section, or in case the intestate shall not leave any or all of the articles specified, she shall be entitled to other property or the value of the same in money; and it shall be the duty of the administrator or court of probate to allow the value of the articles specified by law to be set apart to the widow of any intestate, to be allowed her in money or other personal property, at her election.[2]

SEC. 13. The right of a widow to her separate property shall in no case be affected by her renouncing or failing to renounce the benefit of the provisions made for her in the will of her husband, or otherwise.

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(2) When the personal estate of the decedent is only sufficient to satisfy the widow's allowance, she may take the whole of such personal estate, or the whole of its proceeds, when sold, to the exclusion of creditors of every class. If the whole amount of her allowance is not satisfied by the personal estate or its proceeds, the residue becomes a debt against the estate, and she a creditor of the fourth class, on the footing of other creditors of that class; she is entitled to her *pro rata* share of the proceeds of the real estate, but not to any preference therein, over other creditors. *Cruce* v. *Cruce*, 21 Ill. 52.

Prior Statutes Repealed. An act to protect the rights of married women. Approved November 7, 1861. Laws 1861, p. 152.

An act concerning descents and distributions. Approved October 31, 1861. Laws 1861, p. 246.

An act concerning dower. Approved November 7, 1861. Laws 1861, p. 363.

CHAPTER XXIV.

DISTRICT ATTORNEY.

SECTION
1. The office of county attorney abolished; district attorneys to be elected in each judicial district, at general election in 1868, and biennially thereafter.
2. Governor to appoint district attorneys until election; district attorney to reside in the district for which appointed.
3. Oath of office; bond.
4. Duties of district attorney; county commissioners may employ attorney to assist in any prosecution.
5. District attorney to give opinion in writing to all county officers in his district, without fee.
6. To discharge all duties heretofore imposed by law upon county attorneys.
7. Salary; *proviso*.
8. To receive same fees allowed to county attorneys.
9. This chapter to take effect within the third district upon its approval; and not in the first and second districts until the general election in 1868.

SECTION 1. The office of county attorney is hereby abolished. At the general election to be held in the year of our Lord one thousand eight hundred and sixty-eight, and biennially thereafter, there shall be elected in each judicial district of this territory, by the qualified electors thereof, a district attorney, who shall hold his office for the term of two years, and until his successor is elected and qualified.

SEC. 2. Upon the approval of this chapter, the governor of the territory shall appoint a district attorney in each judicial district to serve until his successor may be elected as hereinbefore provided, and until the qualification of such successor; and in case of a vacancy in such office within any district at any time hereafter, the same shall be filled in like manner by appointment of the governor. Every district attorney shall be a resident of the district for which he is elected or appointed.

SEC. 3. Every such district attorney so elected or appointed shall, before entering upon the duties of his office, take and subscribe an oath to support the constitution of the United States and the organic law of the territory, and that he will faithfully discharge the duties of his office, and shall execute to the people of the territory of Colorado a bond in the sum of five thousand dollars, with good and sufficient security, to be approved by the secretary of the territory, conditioned for the faithful discharge of the duties of his office, as the same are or may be prescribed by law; and upon any breach of such bond, an action shall lie thereon for the benefit of any county fund or person injured thereby.

SEC. 4. Every district attorney shall appear in behalf of the territory, and the several counties of his district, in all indictments, suits and proceedings which may be pending in the district court in any county within his district wherein the territory or the people thereof, or any county of his said district, may be a party; on the hearing of every writ of *habeas corpus* sued out by any person charged with or convicted of any public offence before the judge of his district in any such indictment, action or proceeding which may be removed from the district court of any county within his district into the supreme court by appeal or writ of error; in any such indictment, action, suit or proceeding which may be brought to the district court of any county in his district by change of venue from any other district; and where he may deem it advisable so to do, in the preliminary examination of persons charged with any offence before any justice of the peace or judge within his district. Nothing contained in this section shall be so construed as to prevent the county commissioners of any county from employing one or more attorneys to appear and prosecute or defend in behalf of the people of the territory or such county, in any such indictment, action or proceeding.

SEC. 5. The district attorney, upon request of any county officer of any county within his district shall, without fee, give his opinion in writing upon all questions of law having reference to the duties of such officer which may be submitted; and shall file and preserve in his office a copy of all such opinions.

SEC. 6. The district attorney shall discharge all duties heretofore imposed by law upon the county attorney, and not herein enumerated.

SEC. 7. Every district attorney shall receive the salary of eight hundred dollars per annum, payable quarterly, at the end of each quarter, and to be audited and paid in the same manner as the salary of other territorial officers: *Provided*, That before any such salary shall be audited or paid, the district attorney shall produce to the auditor a certificate of attendance and performance by him of his official duties at every term of the district court held within his district, and by him attended during the period for which such salary is claimed, such certificate to be signed by the judge of the district court holding such terms; and for every term of such district court appointed and held according to law, at which the said district attorney hath not attended, the auditor shall deduct from the salary aforesaid the sum of one hundred dollars, and shall audit and allow the residue thereof.

SEC. 8. In addition to the foregoing salary, district attorneys shall receive the same fees heretofore allowed by law to county attorneys, for services performed by them in pursuance of this chapter.

SEC. 9. This chapter shall take effect, upon its approval, within the third judicial district; and within the first and second judicial districts all county attorneys now in office or hereafter appointed, shall continue in office and perform the duties thereof, and receive the same compensation as now required by law until the general election, to be held in the year of our Lord eighteen hundred and sixty-eight, and until the district attorneys in and for the said first and second judicial districts, shall be elected at such election and qualified as required by law.

Prior Statutes Repealed. An act to establish the office of County Attorney, and to define his duties. Approved October 31, 1861. Laws 1861, p. 213.

CHAPTER XXV.

DISTRICT COURT.

SECTION
1. The territory divided into three judicial districts; what counties included in the three districts respectively.
2. Terms of the district court to be held at the county-seats in the several counties, when; terms of the district court for transaction of business under the laws and constitution of the United States, where to be held; *proviso*, as to term in Boulder county.
3. Saguache county attached to Lake; Huerfano and Las Animas to Pueblo.
4. Process issued heretofore to be deemed to be

SECTION

returnable to the terms as hereby established; *proviso*.

5. Changes of venue to be ordered in certain cases.
6. Where two or more counties are attached for judicial purposes, each liable for expenses incurred by it.
7. Where two or more counties are attached for judicial purposes, process to issue to county where defendant resides.
8. Jurors, in such case, to be summoned from the several counties, according to population.
9. Special terms may be called, how; court may direct whether grand or petit jury be summoned to such term; whether process shall be returnable thereto.
10. Jurors to be summoned to such term as in other cases.

SECTION

11. Hon. Moses Hallett assigned to third district; Hon. Wm. R. Gorsline to second district; Hon. Christian S. Eyster to first district; their successors in office to succeed them in their assignments respectively.
12. Judge of one district may hold terms of court in another, on request of the judge assigned to such district.
13. Governor may assign any justice to hold a stated term in any district in case of the disability of the judge assigned to such district.
14. Judge of district court failing to reach place of holding court by ten o'clock of the day appointed, clerk to ajourn term till Monday of ensuing week.
15. Clerk of district court to appoint deputies.
16. Prior acts repealed.

An act to establish the Judicial Districts within the Territory of Colorado, and to provide for the holding of Courts therein.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. The territory of Colorado shall be and hereby is divided into three judicial districts: The counties of Arapahoe, Douglas, Weld, Lake, Park, Summit and Saguache, compose the first judicial district. The counties of Gilpin, Boulder, Clear Creek, Jefferson and Larimer, compose the second judicial district. The counties of El Paso, Fremont, Pueblo, Huerfano, Costilla, Conejos and Las Animas, compose the third judicial district. All that part of the territory which is not included in any of the counties aforesaid, whether the same be Spanish grants, Indian reservations or other territory, and which lies north of a line running east and west through the most southerly point of Douglas county, shall be included in and constitute part of the first judicial district. All that part of the territory which is not included in any of the counties aforesaid, whether the same be Spanish grants, Indian reservations or other territory, and which lies south of the line running east and west through the most southerly point of Douglas county, shall be included within and constitute part of the third judicial district.

SEC. 2. Terms of the district court shall hereafter be held in the said districts at the county-seats of the several counties therein, as the said county-seats now are or hereafter may be established, commencing on the days following, in each and every year, that is to say: In the first judicial district as follows: In the county of Arapahoe on the third Tuesday of January, on the first Tuesday of May, and on the first Tuesday of October. In the county of Douglas on the first Tuesday of March. In the county of Weld on the second Tuesday of March and the third Tuesday of September. In the county of Park on the third Tuesday of July. In the county of Summit on the first Tuesday of August. In the county of Lake on the third Tuesday of August. In the second judicial district as follows: In the county of Jefferson on the first Tuesday in March, and the fourth Tuesday in September. In the county of Boulder on the third Tuesday in January, and the third Tuesday in July. In the county of Clear Creek on the third Tuesday in April, and the first Tuesday in October. In the county of Gilpin on the first Tuesday in May, and the first Tuesday in November. In the county of Larimer on the third Tuesday in October. In the third judicial district as follows: In the county of Pueblo on the first Tuesday in April, and the fourth Tuesday in October. In the county of Costilla on the third Tuesday in August. In the county of Fremont on the first Tuesday in August. In the county of El Paso on the third Tuesday in March.

Terms of court for transacting business arising in the first judicial district under the constitution and laws of the United States, shall be held at the county-seat of Arapahoe county at the times herein provided for holding courts at that place.

Terms of court for transacting business arising in the second judicial district, under the constitution and laws of the United States, shall be held at the county-seat of the county of Gilpin, at the times herein provided for holding courts at that place.

Terms of court for transacting business arising in the third judicial district under the constitution and laws of the United States, shall be held at the county-seat of the county of Pueblo, at the times herein provided for the holding of courts at that place: *Provided*, That no term of said district court shall be held in said Boulder county in January, A. D. 1868, but in lieu thereof, a term shall be held on the third Tuesday of March.

SEC. 3. The county of Saguache is attached to the county of Lake for judicial purposes. The counties of Huerfano and Las Animas are attached to the county of Pueblo for judicial purposes. The county of Conejos is attached to the county of Costilla for judicial purposes.

SEC. 4. All causes, actions, and proceedings, civil and criminal, instituted, pending, or brought in any court of this territory, in which process has been issued prior to the passage of this chapter, returnable to any term of court as provided by existing laws, shall be deemed and held to be pending in such courts at the term provided in this act, next succeeding the term to which such process shall have been made returnable; and such process shall be deemed and held returnable to the term of such courts provided in this chapter next succeeding the term to which the same has been made returnable: *Provided*, That in all cases in which a term of any court shall, by this chapter, be required to be held prior to the time at which process shall have been made returnable, according to existing laws as aforesaid, it shall be lawful for the parties to the action in which such process shall have been issued, to sue out, and for the clerk of any court, in which such action shall be pending, to issue other process returnable to the term of such court provided by this chapter, and thereafter the suit, action, or proceeding shall proceed as if the same had been originally brought to the term of such court fixed by this chapter; and, *Provided, further*, That in suits instituted by attachment, when the writ shall have been made returnable as aforesaid, a new writ may be issued, returnable to the next term of the court out of which the same shall have been issued or fixed by this chapter, and returnable as provided by existing laws; and if the same shall not be served upon the defendant or defendants named therein, such defendants shall be notified by publication to appear at the next term of such court as fixed by this chapter, in the way and manner provided by existing laws; and thereupon the court shall proceed in the same manner as in other suits of the same nature instituted to such term. All suits, actions, causes and proceedings, civil and criminal, now pending in the district courts of any of the counties of this territory, respectively, shall be deemed and held to be pending in the district courts of said counties respectively, as named and designated by this chapter: *Provided*, That nothing in this chapter contained shall be deemed to adjourn the term of the district court of, in and for the county of Arapahoe, now pending, prior to the first Tuesday of May next.

SEC. 5. The district court of the third judicial district within and for the county of Pueblo, at the first term thereof which shall be held, shall order a change of venue in all causes, issues and proceedings, civil and criminal, now pending and undetermined in that court which have originated within the said county of Fremont, or in which the defendants or a majority of them reside in the said county of Fremont, to be made to the district court of the said county of Fremont; and such causes, issues and proceedings shall be certified and transmitted as in other cases of change of venue; and when so certified and transmitted, such causes, issues and proceedings shall be deemed and held to be pending in the said district court of Fremont county, and that court shall proceed to adjudicate and determine the same. In criminal proceedings in which the venue shall be changed as aforesaid, the said district court of Pueblo county shall have power to make all orders that may be necessary to secure the attendance of defendants and of witnesses at the term of the said district court of Fremont county next succeeding the time when the venue shall be changed as aforesaid. In the same manner and with like power and effect the said district court of Pueblo county shall change the venue in causes, issues and proceedings, civil and criminal, pending therein, which have originated in, or the defendants wherein, or a majority of them, reside in the county of El Paso, to the said county of El Paso. In like manner and with like power and effect the said district court within and for the county of Costilla shall change the venue in causes, issues and proceedings, civil and criminal, pending therein which have originated within, or the defendants wherein reside within, the said county of Saguache, to the said county of Lake. In the same manner and with like power and effect the district court within and for the said county of Weld, shall change the venue in all causes, issues and proceedings pending therein which have originated, or the defendants wherein, or a majority of them, reside within the said county of Larimer, to the said county of Larimer.

SEC. 6. In cases where two or more counties are attached for judicial purposes, as herein, each county shall be liable for the expenses incurred by the same, on account or by reason of said courts, and the clerk of each court shall, at the conclusion of each term, or within thirty days thereafter, make out and certify under the seal of said court a correct account of all the expenses incurred at said term by each of the counties attached to the one in which said term of court is held, and transmit the same to the board of commissioners of such county incurring such expenses, who shall at the first meeting thereafter audit the same and give orders on the county treasurer for the payment thereof to the parties entitled thereto, as in other cases of payment of county expenses.

SEC. 7. In any county attached to another for judicial purposes, when the same is organized, process shall issue to the sheriff of such county in all cases where the defendant or defendants reside, or where the matter or thing in dispute is situated, in such county, to which such process is sent.

SEC. 8. In cases where two or more counties are attached for judicial purposes as provided in this act, jurors shall be summoned from the several counties so attached in proportion, as near as may be, to the population and business of said counties respectively.

SEC. 9. At any regular term of the district court as provided by this act, within any county, such court may by an order to be entered of record, appoint a special term of the district court within and for such county, to be held at any future time, when by law the judge of such district court is not required to attend upon and hold a term of the district court in any other county within such district; and the court may in such order specify and direct whether a grand jury, or a petit jury, or both or neither, shall be summoned to attend at such term, and that such term shall be a term for the return of summons, and other mesne process, to be issued in causes to be thereafter commenced therein; or that the same shall be for the trial of causes and issues then pending, only.

SEC. 10. In case a grand or petit jury is required to attend any such special term of the court, the same shall be chosen and summoned as now provided by law in the case of the regular terms of such district courts.

SEC. 11. The Hon. Moses Hallett, chief justice of the supreme court of the territory, is hereby assigned to the third judicial district, and shall hold terms of the district court thereof, in the several counties thereof, at the times and places provided by law. The Hon. William R. Gorsline, associate justice, is hereby assigned to the second judicial district, and shall hold terms of the district court in the several counties thereof, at the times and places provided by law. The Hon. Christian S. Eyster, associate justice, is hereby assigned to the first judicial district, and shall hold terms of the district court in the several counties thereof, at the times and places provided by law. The successors in office of the several judges hereinbefore assigned to the several districts respectively, shall hold the terms of court as provided in this act, in the said several districts respectively.

SEC. 12. Whenever the judge assigned by law to any judicial district shall in writing request the judge assigned to another district to hold any term of court in the district to which the judge making such request shall have been assigned, it shall be lawful for the judge receiving such request, upon filing the same with the clerk of the court so to be holden, to hold such term in like manner and with like effect as if the same were holden by the judge assigned to such district.

SEC. 13. Whenever it shall happen that either of the justices of the supreme court of this territory shall be unable by reason of sickness, absence from the territory, or any other cause, to hold any stated term of the district court in the judicial district to which he is assigned, it shall be lawful for the governor to assign any other justice of the supreme court specially to hold said term; and all proceedings, orders, judgments and decrees had, made and pronounced at the term so held by the justice so specially assigned, shall have the same force and validity as if the said court were held by the justice assigned generally to said district.

SEC. 14. Whenever it shall happen that any justice of the supreme court shall fail to reach the place appointed for holding any stated term of the district court by two o'clock in the afternoon of that day, it shall be lawful for said clerk to adjourn said court to Monday of the ensuing week, and discharge the jurors, witnesses and recognized persons in attendance until that time; and in case of such adjournment, all proceedings, actions, motions and orders, shall be deemed to be continued over until the day of the adjournment, and all jurors, witnesses and recognized persons shall be under the same obligations to appear at the court at such adjourned day as they were to appear upon the day first appointed.

SEC. 15. The clerk of the district court in each district shall appoint a deputy or deputies in each county in his district wherein a district court is by law required to be held, the judge of the district court for such district approving all such appointments; and every such deputy shall have power to execute the duties of the clerk within the county for which he is appointed.

SEC. 16. The several acts entitled as follows, to wit: An act concerning clerks of the court, approved November 8, A. D. 1861; An act amendatory of an act concerning clerks of the court, approved August 15, 1862; An act to divide the territory of Colorado into judicial districts, and to provide for the holding of courts in the same, approved February 10, 1865; and the two acts severally entitled an act amendatory of an act to divide the territory of Colorado into judicial districts, and to provide for the holding of courts in the same, and severally approved January 11, 1867; and all other acts and parts of acts in conflict herewith are hereby repealed.

SEC. 17. This act shall take effect from and after its passage.

Prior Statutes Repealed. An act in relation to District Courts. Approved September 4, 1861. Laws 1861, p. 33.

An act concerning the District and Supreme Courts. Approved November 8, 1861. Laws 1861, p. 335.

An act concerning Clerks of the Court. Approved November 8, 1861. Laws 1861, p. 336.

An act amendatory of An act concerning Clerks of Courts. Approved August 15, 1862. Laws 1862, p. 43.

An act to divide the Territory of Colorado into Judicial Districts, and to provide for the time of holding Courts in the same. Approved August 15, 1862. Laws 1862, p. 60.

An act to divide the Territory of Colorado into Judicial Districts, and to provide for holding Courts in the same. Approved March 5, 1864. Laws 1864, p. 70.

An act to divide the Territory of Colorado into Judicial Districts, and to provide for the holding of Courts in the same. Approved February 10, 1865. Laws 1865, p. 51.

An act amendatory to An act to divide the Territory of Colorado into Judicial Districts, and to provide for the holding of Courts in the same. Approved January 11, 1867. Laws 1867, p. 59.

An act amendatory to An act to divide the Territory of Colorado into Judicial Districts, and to provide for the holding of Courts in the same. Approved January 11, 1867. Laws 1867, p. 60.

CHAPTER XXVI.

DIVORCE AND ALIMONY.

SECTION
1. Causes for divorce; divorce not to affect the legitimacy of children, except marriage declared void for prior marriage.
2. District court, in chancery, to have jurisdiction of cases of divorce; proceedings as in other cases in chancery; answer not to be under oath.
3. What residence required to entitle complainant to sue in this territory.
4. If injury done by collusion, or if both parties have committed adultery where adultery complained of, no divorce to be granted.
5. If bill be denied, trial to be by jury; if bill confessed, proof may be taken by the master, or in open court; marriage celebrated in a foreign state provable by cohabitation, acknowledgment of parties, etc.
6. Court may on decreeing divorce grant alimony, and make orders touching custody of children; may grant alimony *pendente lite* and make alterations therein.
7. Wife complainant may prosecute as poor person.
8. Rules of proceeding same as in other cases in chancery.

SECTION 1. In any case in which a marriage has been or hereafter may be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided, that either party at the time of the marriage was and continued to be impotent naturally, or that he or she had a wife or husband living at the time of such marriage, or that either party has committed adultery subsequent to the marriage, or has wilfully deserted and absented himself or herself from the husband or wife, without any reasonable cause, for the space of one year, or that a husband has wilfully deserted and absented himself from his wife and departed from this territory, without any intention of returning, or that either party has been guilty of habitual drunkenness for the space of two years, or been guilty of extreme cruelty,[1] or been convicted of felony, or other infamous crime, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract, but no such divorce shall in anywise affect the legitimacy of the children of such marriage, except in case where the marriage shall be declared void on the ground of a prior marriage.[2]

SEC. 2. The district court, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony, by this chapter allowed; and the like process, practice and proceedings shall be had, as are usually had in other cases in chancery, except as is hereinafter provided, and except that the answer of the defendant need not be under oath.

SEC. 3. No person shall be entitled to a divorce, in pursuance of the provisions of this chapter, who has not resided in this

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(1) To justify a divorce on the ground of cruelty there must be shown acts or threats against the party complaining, sufficient to occasion a reasonable apprehension of bodily hurt. *Harmon* v. *Harmon*, 16 Ill. 90. *Vignos* v. *Vignos*, 15 Ill. 186. *Turbitt* v. *Turbitt*, 21 Ill. 438. *Birkley* v. *Birkley*, 15 Ill. 120. *DeLaHay* v. *DeLaHay*, 21 Ill. 252.

Hopeless insanity occurring after marriage is not a ground for divorce. *Haymaker* v. *Haymaker*, 18 Ill. 137.

(2) The only divorce known to the statute is the divorce *a vinculo*. *Clark* v. *Lott*, 11 Ill. 105. As to the effect of the divorce generally. See *Clark* v. *Lott*, *Ibid.*

territory one whole year previous to filing his or her bill, unless the offence or injury complained of was committed within this territory, or whilst one or both of the parties resided in this territory.[3]

SEC. 4. If it shall appear that the injury complained of was occasioned by collusion of the parties, for the purpose of obtaining a divorce, or that both parties have been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.[4]

SEC. 5. In all cases for a divorce, where the defendant shall appear and deny the charges in the complainant's bill alleged, the same shall be tried by a jury; but if the bill is taken for confessed, the court may proceed to a hearing of the cause by examination of witnesses in open court, or may refer the cause to the master in chancery to take proofs;[5] but any marriage which may have been celebrated in any foreign state or country, may be found by the acknowledgment of the parties, their cohabitation, or other circumstantial evidence.[6]

SEC. 6. When a divorce shall be decreed, it shall and may be lawful for the court to make such order, touching the alimony and maintenance of the wife, the care and custody of the children, or any of them, as from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just; and in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may enforce the payment of such alimony and maintenance, in any other manner consistent with the rules and practice of the court, and may also grant alimony *pendente lite*; and the court may on application from time to time, make such alteration in the allowance of alimony and maintenance as shall appear reasonable and proper.[7]

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(3) Where the offence complained of was desertion, which commenced abroad, and was consummated in the state, it was held to be committed within the state, and that the one year's prior residence was unnecessary to entitle the injured party to maintain her bill. *Ashbaugh* v. *Ashbaugh*, 17 Ill. 476, citing *Masten* v. *Masten*, 15 N. H. 159. *Fischer* v. *Fischer*, 12 Barb. 640.

(4) A defendant who avers adultery by complainant, in bar of the bill, must establish it by sufficient proofs; mere circumstances of suspicion will not be sufficient. *Davis* v. *Davis*, 19 Ill. 334.

(5) The defendant can not confess the facts alleged in the bill as ground for divorce, so as relieve the complainant of the necessity of proving them; the court can grant the divorce only upon proofs. *Harmon* v. *Harmon*, 16 Ill. 85. *Shillinger* v. *Shillinger*, 14 Ill. 147. *Wheeler* v. *Wheeler*, 18 Ill. 39.

The fact of the marriage if confessed, need not be proved. 16 Ill. 85.

(6) And it seems that the marriage may be proven, in the same manner, even when alleged to have been celebrated within this territory. *Harmon* v. *Harmon*, 16 Ill. 85.

To sustain a bill for divorce, it is not necessary to allege or prove a lawful marriage; a marriage in fact, evidenced and existing in cohabitation merely, or one which is absolutely void, as within the degrees of consanguinity, may be dissolved upon bill. *Harmon* v. *Harmon*, 16 Ill. 85.

(7) As to the power of the court to decree alimony, and what matters are the proper subjects of inquiry upon application therefor. See *Reavis* v. *Reavis*, 1 Scam. 242. *Stewartson* v. *Stewartson*, 15 Ill. 144. *Foote* v. *Foote*, 22 Ill. 426.

It is not error to decree certain of the lands of the husband to the wife in fee, as alimony. *Joliff* v. *Joliff*, 32 Ill. 527. *Wheeler* v. *Wheeler*, 18 Ill. 39.

The allowance of alimony rests upon the exercise of a judicial discretion which is a proper subject of review on appeal. *Foote* v. *Foote*, 22 Ill. 426.

SEC. 7. Any woman suing for a divorce, who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs, and in such cases, no fees shall be charged by the officers of the court.[8]

SEC. 8. The same rule of proceeding shall be had as in other cases in chancery, and upon the hearing, the court shall have the power to decree a dissolution of the bonds of matrimony, if the causes mentioned in this chapter are proven to exist.

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(8) Where a divorce was granted on complaint of the husband, held to be erroneous to decree costs against the wife. *Reavis* v. *Reavis*, 1 Scam. 242.

Prior Statutes Repealed. An act concerning Divorces and Alimony. Approved November 1, 1861. Laws 1861, p. 360.

CHAPTER XXVII.

EJECTMENT.

SECTION

1. Ejectment may be brought as at common-law, subject to the provisions of this chapter.
2. In what other cases.
3. No person to recover unless he has a subsisting interest at the time of commencing his action, and a right to recover the same; or the right to possession, etc.
4. Who to be made defendant.
5. How commenced; filing of declaration; issuing summons; service of summons.
6. Use of fictitious names abolished.
7. Substance of declaration.
8. Shall set forth the estate or right claimed by the plaintiff.
9. May contain several counts; several parties may join as plaintiffs in one count, and sever in others.
10. How defendant may compel production of authority of plaintiff's attorney.
11. Stay of proceedings until production of authority; proof thereof.
12. If defendant already served with proof of authority, application dismissed at his cost.
13. Defendant may demur, or plead general issue only; evidence.
14. Consent rule abolished.
15. Plaintiff need not show an actual entry under title.
16. Lease entry and ouster need not be proved or admitted.
17. Proof of ouster, where action between joint tenants or tenants in common.
18. Verdict where joint possession of several defendants proved.
19. Where action against several defendants jointly, and it appears that some occupy different parcels in severalty, plaintiff to elect.
20. Of the verdict in several cases, and what the same must specify.
21. When a plaintiff's right expires pending the action, plaintiff to recover damages and costs.
22. Action not to abate by death of any plaintiff, or one of several defendants, after issue, and before verdict.
23. Of the judgment.
24. Plaintiff recovering to have writ of possession; form of writ.

SECTION

25. Judgment conclusive upon defendant, and those claiming under him, by title acquired after commencement of action.
26. New trial granted on payment of costs within one year after judgment; second new trial; no more than two new trials to be granted under this section.
27. Judgment by default conclusive after two years; new trial may be granted within two years.
28. Persons under disability not within the last section, may bring cross-action at any time within two years after removal of disability.
29. In case of death of such party, heirs may bring action at any time within two years after disability removed.
30. If plaintiff has taken possession, under any such judgment, vacating judgment not to affect his possession; defendant recovering, on new trial granted, to have a writ of possession.
31. Evidence in bar on any new trial.
32. Plaintiff recovering entitled to damages for rents and profits.
33. Action of trespass for mesne profits abolished; claim for damages to be suggested within one year.
34. Form of suggestions; service on defendant; pleading.
35. What defendant may plead.
36. Trial of issue; if verdict for plaintiff, jury to assess damages.
37. What plaintiff required to establish; defendant may set-off value of improvement to amount of plaintiff's claim; value of use of defendant's improvements not allowed to plaintiff.
38. If defendant suffer default, writ of inquiry to assess damages; defendant to have notice of its execution.
39. Proceedings on execution of writ of inquiry.
40. If plaintiff die pending the action, personal representatives may proceed for mesne profits.
41. Lessee from United States may recover in ejectment.
42. Plaintiff need not prove entry of defendant, if by return on summons he appear to be in possession; unless possession traversed by special plea.

SECTION
43. Defendant evicted claiming under title deduced from the record, without actual notice of adverse title derived of record, not liable for rents accrued or damages done before actual notice; *proviso*.

SECTION 1. The action of ejectment may be brought in the cases and manner usual at common-law, subject to the provisions hereinafter contained.

SEC. 2. It may also be brought in the same cases in which a writ of right may now be brought by law to recover lands, tenements or hereditaments, and by any person claiming an estate therein in fee or for life, either as heir, devisee or purchaser, or the right to occupy and possess the same.

SEC. 3. No person shall recover in ejectment unless he has at the time of commencing the action a valid subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or of some share, interest or portion thereof, to be proved and established at the trial.[1]

SEC. 4. If the premises for which the action is brought, are actually occupied by any person, such actual occupant shall be named defendant in the declaration; if they are not so occupied, the action shall be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto or some interest therein, at the commencement of the suit.[2]

SEC. 5. The action of ejectment shall hereafter be commenced by the filing of a declaration in the office of the district court of the proper county, whereupon a summons shall issue directed to the sheriff for service as in other cases. And in all cases in ejectment where the said summons shall be served ten days before the first day of the term of court to which the said sum-

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(1) To recover in ejectment, the plaintiff must show such an estate or right as entitles him to the present possession of the premises. *Batterton* v. *Yokum*, 17 Ill. 288.

And the estate must have accrued to him before the bringing of the action. *Simmons* v. *McKissack*, 6 Humph. 259.

And at or before the time laid in the declaration. *Siglar* v. *VanRipar*, 10 Wend. 414. *Wood* v. *Morton*, 11 Ill. 548.

(2) Where the premises are actually occupied and possessed, though by a mere servant, claiming no interest in them, such servant, and not his employer, must be made defendant. *Shaver* v. *McGraw*, 12 Wend. 558.

But a servant not in *actual occupancy* and possession, but exercising acts of ownership, such as cultivating the soil, ought not to be made defendant to the action of ejectment. *Ibid.*

Where the premises are in actual possession, only the occupant should be made defendant; the judgment binds him, and all persons under whom he occupies, or who are in priority of estate or possession with him. *Hanson* v. *Armstrong*, 22 Ill. 445.

If the action be against a tenant, the landlord may be let in to defend with the tenant, on showing that his title is connected to, and consistent with that of the defendant. *Williams* v. *Brunton*, 3 Gilm. 620.

And a mortgagee stands in the same position as the landlord; even after foreclosure. *Ibid.* And see *Jackson* v. *Stiles*, 1 Wend. 103. *James* v. *Bennett*, 10 Wend. 540. *People* v. *Webster*, 10 Wend. 554.

And if the tenant, through fraud or collusion, suffer a default, without giving notice to the landlord, the judgment will be set aside on application of the landlord, supported by proper affidavit. *Ibid.*

But there is no warrant in the statute for the substitution of the landlord's name for that of the tenant, in the declaration, without the plaintiff's assent. *Merritt* v. *Thompson*, 13 Ill. 722.

mons is returnable, the defendant or defendants shall be required to plead, and the said cause shall be set for trial as is provided in other cases. The sheriff shall serve the said summons by reading to the defendant, or, in case they cannot be found in the county, then by delivering a copy of said summons to some person of the family of the defendant of the age of ten years or upwards, who shall be found residing at the dwelling-house of said defendant.

SEC. 6. The use of fictitious names of plaintiffs or defendants, and of the names of any other than the real claimants and the real defendants, and the statement of any lease or demise to the plaintiff, and of an ejectment by an actual or nominal ejector, are hereby abolished.

SEC. 7. It shall be sufficient for the plaintiff to aver in his declaration, that on some day therein to be specified, and which shall be after his title accrued, he was possessed of the premises in question, (describing them as hereinafter provided) and being so possessed thereof, that the defendant afterwards (on some day to be stated) entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage—any nominal sum the plaintiff shall think proper to state; and the premises so claimed shall be described in such declaration with convenient certainty, so that from such description, possession of the premises claimed may be delivered. If such plaintiff claims any undivided share or interest in any premises, he shall state the same particularly, in such declaration.

SEC. 8. The plaintiff shall in every case state in his declaration whether he claims in fee, or whether he claims for his own life or the life of another, or for a term of years, specifying such life or the duration of such term; or if such plaintiff claims the right to occupy and possess the premises, under the local laws of any mining district or otherwise, the declaration shall contain a brief statement of such claim, and whether the same be by pre-emption or purchase.[3]

SEC. 9. In any case the declaration may contain several counts, and several parties may be named as plaintiffs, jointly in one count, and separately in others.

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(3) The plaintiff cannot recover unless the estate or right claimed by him is specified in his declaration. *Rawlings* v. *Bailey*, 15 Ill. 179.

And he must recover according to such allegations, as to his estate, or not at all. If he claims an estate in fee, he cannot recover a less estate; nor an estate in fee or for years, where he claims an estate for life; nor an estate for life nor in fee, when he claims an estate for years; nor an undivided interest in the premises, where he claims the whole; nor where he claims an undivided share, can he recover a less or greater share. But if he declare for the whole, he may recover any distinct part or parcel; or if for an undivided share in the whole, that share in any distinct part or parcel. *Ballance* v. *Rankin*, 12 Ill. 420. *Holmes* v. *Seeley*, 17 Wend. 75. *Gillett* v. *Stanley*, 1 Hill, 121. *Cole* v. *Irvin*, 6 Hill, 634. *Rupert* v. *Mark*, 15 Ill. 540. *Christy* v. *Pulliam*, 17 Ill. 60. *Murphy* v. *Orr*, 32 Ill. 489.

SEC. 10. A defendant in ejectment may, at any time before pleading, apply to the court, or to any judge thereof, in vacation, to compel the attorney for the plaintiff to produce to such court or officer, his authority for commencing the action in the name of any plaintiff therein; such application shall be accompanied by an affidavit of the defendant, that he has not been served with proof, in any way, of the authority of the attorney to use the name of the plaintiff, stated in the declaration.

SEC. 11. Upon such application, the court or officer shall grant an order, requiring the production of such authority, and shall stay all proceedings in the action until the same shall be produced. Any written request of such plaintiff, or his agent, to commence such action, or any written recognition of the authority of the attorney to commence the same, duly proved by the affidavit of such attorney, or other competent witness, shall be sufficient presumptive evidence of such authority.

SEC. 12. If it shall appear that previous to such application by any defendant, he was served with a copy of the affidavit of the plaintiff's attorney, showing his authority to bring such action, such application shall be dismissed; and such defendant shall be liable for the costs of such application, the payment of which may be compelled by attachment, as in other cases, which may be issued upon proof of disobedience to the order of the court or officer directing the payment of such costs.

SEC. 13. The defendant may demur to the declaration, as in personal actions, or he shall plead the general issue only,[4] which shall be that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff, as alleged in the declaration; and the filing of such plea or demurrer shall be deemed an appearance in the cause; and upon such plea, the defendant may give the same matter in evidence, and the same proceedings shall be had as upon the plea of not guilty, in the present action of ejectment, except as herein otherwise provided; the defendant may likewise give in evidence any matter which if pleaded in the present writ of right would bar the action of the plaintiff.

SEC. 14. The consent rule heretofore used is hereby abolished.

SEC. 15. It shall not be necessary for the plaintiff to prove an actual entry under title, nor the actual receipt of any of the profits of the premises demanded, but it shall be sufficient for him to show a right to the possession of such premises at the time of the commencement of the suit, as heir, devisee, purchaser or otherwise.

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(4) A special plea, claiming the premises as a homestead, cannot be entertained; the defendant may give this in evidence under the general issue. *Johnson* v. *Adleman*, 35 Ill. 265.

SEC. 16. It shall not be necessary on the trial, for the defendant to confess, nor for the plaintiff to prove lease and ouster, or either of them, except as provided in the next section; but this section shall not be construed to impair, nor in any way to effect any of the rules of evidence now in force, in regard to the maintenance and defence of the action.

SEC. 17. If the action be brought by one or more tenants in common, or joint tenants, against their co-tenants, the plaintiff, in addition to all other evidence which he may be bound to give, shall be required to prove on the trial of the cause, that the defendant actually ousted such plaintiff, or did some other act amounting to a total denial of his right as such co-tenant.

SEC. 18. If the action be brought against several defendants, and a joint possession of all be proved, the plaintiff shall be entitled to a verdict against all, whether they shall have pleaded separately or jointly.

SEC. 19. When the action is against several defendants, if it appear on the trial that any of them occupy distinct parcels in severalty or jointly, the plaintiff shall elect at the trial against which he will proceed, which election shall be made before the testimony in the cause shall be closed, and a verdict shall thereupon be rendered for the defendants not so proceeded against.

SEC. 20. In the following cases, the verdict shall be rendered as follows:

First, If it be shown on the trial that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally.

Second, If it appear that one or more of the plaintiffs have a right to the possession of the premises, and that one or more have not such right, the verdict shall specify for which plaintiff the jury find, and as to which plaintiff they find for the defendant.

Third, If the verdict be for any plaintiff, and there be several defendants, the verdict shall be rendered against such of them as were in possession of the premises, or as claimed title thereto at the commencement of the action.

Fourth, If the verdict be for all the premises claimed as specified in the declaration, it shall in that respect be for such premises generally.

Fifth, If the verdict be for a part of the premises described in such declaration, the verdict shall particularly specify such part, as the same shall have been proved, with the same certainty hereinbefore required in the description of the premises claimed.

Sixth, If the verdict be for an undivided share or interest in the premises claimed, it shall specify such share or interest, and if for an undivided share in a part of the premises claimed, it shall specify such share, and shall describe such part of the premises as hereinbefore required.

Seventh, The verdict shall also specify the estate which shall have been established on the trial by the plaintiff in whose favor it shall be rendered,[5] whether such estate be in fee for his own life, or for the life of another, stating such lives, or whether it be for a term of years, specifying the duration of such term, or whether the plaintiff hath established only his right to the possession and occupancy of the premises in controversy.

SEC. 21. If the right or title of a plaintiff in ejectment expire, after the commencement of the suit, but before trial, the verdict shall be returned according to the fact, and judgment shall be entered, that he recover his damages by reason of the withholding of the premises by the defendant, to be assessed, and that as to the premises claimed, the defendant go thereof without day.

SEC. 22. The action of ejectment shall not be abated by the death of any plaintiff, or of one of several defendants, after issue and before verdict and judgment, but the same proceedings may be had as in other actions, to substitute the names of those who may succeed to the title of the plaintiff so dying, in which case, the issue shall be tried as between the original parties; and in case of the death of a defendant, the cause shall proceed against the other defendants.[6]

SEC. 23. In cases where no other provision is made, the judgment in the action, if the plaintiff prevail, shall be that the plaintiff recover the possession of the premises, according to the verdict of the jury, if there was such verdict; or if the judgment be by default, according to the description thereof in the declaration, with costs, to be taxed.

SEC. 24. The plaintiff recovering judgment shall be entitled to a writ of possession, which shall be substantially in the following form:[7]

THE PEOPLE, &c., to the sheriff, &c.: Whereas, A. B. has lately, in the district court, held in and for the county of ——,

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(5) A verdict which does not specify the estate or right established in the plaintiff will not be sufficient to sustain a judgment of recovery. *Rawlings* v. *Bailey*, 15 Ill. 179.

And where the trial is had before the court without a jury, the judgment must specify the plaintiff's estate. *Minkhart* v. *Hankler*, 19 Ill. 47.

A judgment "that the defendant is guilty of withholding the premises, to wit, etc., and that the plaintiff is entitled thereto," is a compliance with the statute. *Ibid.*

And so of a finding "that the plaintiff is owner of the premises." It is equivalent to a finding that he has established an estate in fee. *Hadlock* v. *Hadlock*, 22 Ill. 384.

(6) The action does not abate by the death of one of several plaintiffs, nor of a sole defendant. *Guyer* v. *Wookey*, 18 Ill. 536.

(7) The writ of possession can issue only against the defendant in the suit, or those who have entered under him since the commencement of the suit. *Bush* v. *Fowler*, 36 Ill. 58.

And only for the premises which were shown to be in possession of defendant; if the plaintiff under the writ take more lands than he has recovered, or disturb the possession of one not a party to the suit, the court will on motion award a writ of restitution. *Coleman* v. *Henderson*, 2 Scam. 252.

by the judgment of the said court, recovered against C. D., one messuage, &c., (describing the premises recovered, with the like certainty as above provided), which said premises have been and are still unjustly withheld from the said A. B. by the said C. D., whereof he is convicted as appears to us of record, and his said judgment against the said C. D., according to the force, form and effect of his said recovery. Wherefore, we command you, that without delay, you deliver to the said A. B. possession of the premises so recovered, with the appurtenances, and that you certify to &c., at &c., on &c., in what manner you shall have executed this writ; (if there be costs to be collected, the proper clause may be here inserted, or a separate execution may be issued therefor.) Witness, &c.

SEC. 25. Every judgment in the action of ejectment, rendered upon a verdict, shall be conclusive, as to the title established in such action, upon the party against whom the same is rendered, and against all persons claiming from, through or under such party, by title accruing after the commencement of such action, subject to the exceptions hereinafter named.[8]

SEC. 26. The court in which such judgment shall be rendered, at any time within one year thereafter, upon the application of the party against whom the same was rendered, his heirs or assigns, and upon the payment of all costs and damages recovered thereby, shall vacate such judgment, and grant a new trial in such cause; and the court upon subsequent application, made within one year after the rendering of the second judgment in said cause, if satisfied that justice will thereby be promoted, and the rights of the parties more satisfactorily ascertained and established, may vacate the judgment and grant another new trial; but no more than two new trials shall be granted under this section.[9]

SEC. 27. Every judgment in ejectment rendered by default, shall from and after two years from the time of entering the same, be conclusive upon the defendant, and upon all persons claiming from or through him by title accruing after the com-

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(8) The recovery binds all persons under whom the defendant claims possession, or who are in privity of estate or possession with him. *Hanson* v. *Armstrong*, 22 Ill. 445.

A recovery against the tenant binds the landlord, and against one of tenants in common binds the co-tenants. *Ibid.*

(9) The unsuccessful party may, as in other cases, have a new trial, without payment of costs, upon showing cause. *Emmons* v. *Bishop*, 14 Ill. 152.

It is a condition precedent to the authority of the court to grant a new trial, upon application under the statute, that the costs should be first paid. 14 Ill. 152. *Octgen* v. *Ross*, 36 Ill. 338.

To pay the costs merely, or to file a petition for a new trial with the clerk, is not sufficient; the party must apply to the court within the year, to vacate the judgment. *Riggs* v. *Savage*, 2 Gilm. 400. 14 Ill. 152.

If the party fail to make application within the year, it is in the discretion of the court to grant or refuse a new trial, upon application subseqently. 2 Gilm. 400.

The year commences to run from the day when the judgment is rendered. 14 Ill. 152.

The party defeated is entitled to one new trial, as a matter of right; it is in the discretion of the court to grant or refuse an application for a second new trial. *Vance* v. *Schuyler*, 1 Gilm. 160.

mencement of the action; but within two years after the entering of such judgment, on the application of the defendant, his heirs or assigns, and upon the payment of all costs and damages recovered thereby, the court may vacate such judgment, and grant a new trial, if such court shall be satisfied that justice will be promoted, and the rights of the parties more satisfactorily ascertained and established.

SEC. 28. But if the defendant, at the time of the entering of the judgment by default, be either, *first*, within the age of twenty-one years; or *second*, insane; or *third*, imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence, for any term less than for life; or *fourth*, a married woman; the time during which the disability shall continue, shall not be deemed any portion of the said two years, but any such person may bring an action for the recovery of such premises after that time, and within two years after such disability shall be removed, but not after that period.

SEC. 29. If the person entitled to commence such action shall die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of or upon the title, right or action so to him accrued, his heirs may commence such action after the time above limited for that purpose, and within two years after his death.

SEC. 30. If the plaintiff shall have taken possession of the premises by virtue of any recovery in ejectment, such possession shall not in any way be affected by the vacating of any judgment as herein provided; and if the defendant recover in any new trial hereby authorized, he shall be entitled to a writ of possession, in the same manner as if he were plaintiff.

SEC. 31. Upon any new trial granted as herein provided, the defendant may show any matters in bar of a recovery, which he might show to entitle him to the possession of the premises, if he were plaintiff in the action.

SEC. 32. The plaintiff recovering judgment in ejectment in any of the cases in which such action may be maintained, shall also be entitled to recover damages against the defendant for the rents and profits of the premises recovered.

SEC. 33. Instead of the action of trespass for mesne profits heretofore used, the plaintiff seeking to recover such damages shall within one year after the entering of the judgment make and file a suggestion of such claim, which shall be entered with the proceedings thereon upon the record of such judgment, or be attached thereto as a continuation of the same.

SEC. 34. Such suggestions shall be substantially in the same form as is now in use for a declaration in an action of *assumpsit*, for use and occupation as near as may be; and it shall be served on the defendant in the same manner hereinbefore prescribed, respecting the service of a summons in ejectment; and the same rules of pleading thereto, shall be observed as upon declaration in personal actions.

SEC. 35. The defendant may plead the general issue of *non assumpsit*, and under such plea may give notice of, or may plead specially any matter in bar of such claim, except such as were or might have been controverted in such action of ejectment, but he may plead or give notice of a recovery by such defendant or any other person of the same premises, or of part thereof, subsequent to the verdict in such action of ejectment, in bar or in mitigation of the damages claimed by the plaintiff.

SEC. 36. If any issue of fact be joined on such suggestion, it shall be tried as in other cases; and if such issue be found for the plaintiff, the same jury shall assess his damages to the amount of the mesne profits received by the defendant since he entered into possession of the premises, subject to the restrictions hereinafter contained.

SEC. 37. On the trial of such issue, the plaintiff shall be required to establish, and the defendant may controvert, the time when such defendant entered into the possession of the premises. The time during which he enjoyed the mesne profits of the premises shall not be evidence of such time. On such trial, the defendant shall have the same right to set-off any improvements made on the premises to the amount of the plaintiff's claim, as is now, or shall hereafter be allowed by law, and in estimating the plaintiff's damages, the value of the use by the defendant of any improvements made by him, shall not be allowed to the plaintiff.

SEC. 38. If no issue of fact be joined on such suggestion, or if judgment thereon be rendered against the defendant by default, on demurrer, or otherwise, a writ of inquiry to assess the value of such mesne profits shall be issued, of the execution of which the same notice shall be given to the defendant or his attorney, as in other cases.

SEC. 39. Upon the execution of such writ, the plaintiff shall be required to establish the same matters hereinbefore required in the case of an issue being joined; and the defendant may in like manner controvert the same, and make any set-off to which he shall be entitled, and the jury shall assess the damages in the same manner; the same proceedings shall be had on such writ, and it shall be returned as in other cases, with the inquisition taken thereon; upon such inquisition, or upon the verdict of the jury, in the case of the issue being joined, the court shall render judgment as in actions of *assumpsit* for use and occupation, which shall have the like effect in all respects.

SEC. 40. If the plaintiff in ejectment shall have died after issue joined on the judgment therein, his personal representatives may enter a suggestion of such death, of the granting letters, testamentary or of administration, to them, and may suggest their claim to the mesne profits of the premises recovered, in the same manner and with the like effect as the deceased; and the same proceedings in all respects shall be had thereon.

SEC. 41. In all cases in which any person has heretofore entered upon and occupied, or shall hereafter enter upon and occupy any lands, tenements or hereditaments within this territory, by virtue of any lease or permit from the United States, or this territory, such person, his, her or their heirs or assigns, may have and maintain an action of ejectment against any person who has or may enter upon such lands, tenements or hereditaments without the consent of such lessee, his, her or their heirs or assigns, and proof of the right of possession shall be sufficient to authorize a recovery.

SEC. 42. It shall not be necessary in trials of ejectment, when it shall appear by the return that the defendant or defendants were in possession of the premises at the time when the suit was brought, for the plaintiff to prove that said defendant or defendants were in possession at the time of bringing such suit, unless the defendant or defendants shall by special plea deny that he, she or they were in possession; and the plea of not guilty shall not put in issue the possession of the said premises, anything in this chapter to the contrary notwithstanding.

SEC. 43. Every person who may hereafter be evicted from any land for which he can show a plain, clear and connected title in law or equity, deduced from the record of some public office,[10] without actual notice of an adverse title, in like manner derived from record, shall be exempt and free from all and every species of action, writ or prosecution for or on account of any rents or profits, or damages which shall have been done, accrued or incurred at any time prior to receipt of actual notice of the adverse claim by which the eviction may be effected: *Provided*, such person obtained peaceable possession of the land.

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(10) It seems that the phrase "deduced from the record of some public office," refers to the origin of the title; it is not essential that every link in the chain of title should be of record. *Porterfield* v. *Clark*, 2 How. 125. *Poage's Heirs* v. *Chinn's Heirs*, 4 Dana, 55.

Prior Statutes Repealed. An act concerning Ejectments. Approved November 7, 1861. Laws 1861, p. 68.

An act amendatory of an act entitled An act concerning Ejectments. Approved August 11, 1862. Laws 1862, p. 64.

An act to amend the Act concerning Ejectments. Approved February 9, 1866. Laws 1866, p. 53.

CHAPTER XXVIII.

ELECTIONS.

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65. Names of electors to be alphabetically arranged; residence to be set forth; to enter names of all electors on poll-book of last election; may take poll-book from county clerk's office; shall omit names of all electors who have died or left precinct since last election; board to make four copies of registry list; forward one to county clerk; two to be retained by judges of election; one copy to be posted where last election held; penalty for tearing down such list; county commissioners may cause copies of list to be posted and published, etc.
66. Board of county commissioners to designate and fix boundaries of election precincts before first Tuesday of July 1868; description to be recorded by county clerk, and published.
67. Where new precinct established, judges of election to be appointed; judges so appointed to prepare registry of electors from the best means at their command; proceedings in case of a division of precincts.
68. Board of registry to meet on Tuesday of the week preceding every election, and revise lists.
69. Proceedings of board at such meeting to be open.
70. Duty of board in making revision of lists; any elector may apply to have his name entered.
71. Four copies of revised lists to be prepared; how to be disposed of; judges to check name of elector voting, whose name is upon list; no person not registered to vote except upon affidavit to his qualifications as an elector, and proof thereof by some registered voter; affidavit to be preserved; penalty for false swearing.
72. Vacancy in office of judge of election how filled; judges to be sworn.
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74. Compensation of judges while employed in preparing registry.
75. Registering in two precincts; falsely personating a registered voter; aiding or abetting same; penalty; false swearing before board of registry, perjury; member of board of registry violating this act, penalty.
76. Secretary of territory to prepare blank registry lists, and distribute same.
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78. Judges of election in incorporated towns to prepare and revise registry lists.
79. To proceed as in other cases, except lists to be filed with city clerk.

SECTION
80. Proceedings in case of special elections to be the same as in other cases.
81. Section twenty-four of the act of November 6, 1861, repealed.
82. To what election this held to apply; proceedings in case of special or municipal election held prior to next general election.
83. This act to take effect from its passage.
84. The act of January 24, 1866, repealed.
85. Section twelve of the act of November 6, 1861, repealed.
86. General elections to be held on the second Tuesday of September in each year.

An act regulating Elections.

[*Approved November* 6, 1861, *Laws* 1861, *p*. 72.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That every male person of the age of twenty-one years and upwards, not being a negro or mulatto,[1] belonging to either of the following classes, who shall have resided in this territory for six[2] months, next preceding any election, and ten days in the township, precinct, or ward, in which he offers to vote, shall be deemed a qualified voter at such election: *First*, Citizens of the United States; *Second*, Persons of foreign birth, who have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization; *Third*, Persons of Indian blood, who have been declared by treaty, to be citizens of the United States.

SEC. 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason, felony, or bribery, unless restored to civil rights; nor shall any person, being an inhabitant of this territory, who may hereafter be engaged, directly or indirectly, in any duel, either as principal or accessory, be permitted to vote at any election; nor shall any person, who shall have made or become, either directly or indirectly, interested in any bet or wager depending upon the result of any election at which he shall offer to vote, be permitted to vote at such election; nor shall any person who has not resided at least ten days in the township, ward or precinct, in which he offers to vote, be allowed to vote therein. Every qualified elector shall be eligible to hold any office for which he is an elector.

SEC. 3. A general election shall be held in the several townships, precincts or wards, in this territory, on the second Tuesday of September[3] in each year, excepting the first election, which shall be held on the first Monday in December next, at which time there shall be chosen so many of the following officers as are by law to be elected in such year, that is to say:

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(1) Act of March 11, 1864. Laws 1864, p. 79.
(2) Ibid.
(3) Ibid.

delegate to congress, members of the council and members of the house of representatives, county superintendent of schools, probate judge, sheriff, county attorney, county clerk, who shall also be *ex officio* recorder of deeds, county treasurer, coroner, and members of the board of county commissioners, and all other territorial and county officers, including justices of the peace and constables.

SEC. 4. Special elections may be held in the following cases, and for the election of the following officers: *First*, When there has been no choice, at the general election, of a delegate to congress, members of the council or house of representatives, or of any county officers who should properly have been chosen at such general election. *Second*, When the rights of a person, elected, to the office of members of the council, members of the house of representatives, or to either of the said county offices, shall cease, by death or otherwise, before the commencement of the term of service for which he shall have been elected. *Third*, When a vacancy shall occur in either of said county offices, after the commencement of the term of service and more than three months before the next general election. *Fourth*, When a vacancy occurs in the office of members of the council, or members of the house of representatives, after the last day of October, and before the first day of December next following. *Fifth*, If a vacancy, proper to be supplied at a general election shall not have been supplied at the general election next succeeding the happening thereof, a special election, to supply such vacancy, shall be held. *Sixth*, When in any other case of a vacancy, not particularly provided for in this section, the Governor shall in his discretion direct.

SEC. 5. A vacancy in either of the offices named in the third section of this act, which shall not have been supplied by an election before the general election next succeeding the happening thereof, may be supplied at such election.

SEC. 6. Special elections shall be conducted and the results thereof canvassed and certified, in all respects, as near as practicable, in like manner as general elections, except as otherwise directed; and no special election shall be held within thirty days next preceding a general election.

SEC. 7. All general and special elections shall be held at the place in each precinct, township or district, where the last election was held, or at such other place therein, as shall have been ordered by the board of county commissioners: *Provided*, Nothing in this act shall prevent the holding of two or more polls in one precinct, township or district, when the same shall be ordered by the commissioners.

SEC. 8. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after having assembled at, or as near as practicable, to such place, and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place, forthwith proceed with the election.

SEC. 9. Upon adjourning any election as provided in the preceding section, the judges shall cause proclamation thereof to be made, and shall station a constable, or some other proper person, at the place where the adjournment was made, to notify all electors arriving at such place, of the adjournment and the place to which it was made.

SEC. 10. The secretary of the territory shall, between the first day of July and the fifteenth day of the same month, in each year, in which a delegate to congress or any other territorial officer are to be elected for a full term, make out, and cause to be delivered to the sheriff of each county, a notice in writing, stating that at the next general election the before-mentioned territorial officers are to be elected, or so many of such officers as are then to be chosen.

SEC. 11. If any vacancy shall exist in the office of delegate to congress, or any other territorial office proper to be supplied at the ensuing general election, one month before such election the secretary of the territory shall give notice in writing to the sheriff of each county, specifying the cause of such vacancy, the name of the officer in whose office it occurred, and the time when his term of office would have expired.

SEC. 12. The secretary of the territory shall, between the first day of July and the fifteenth day of the same month, in each year, in which the official term of any member of the council, or member of the house of representatives, will expire, make out, and cause to be delivered to the sheriff of each county comprising such district, or to the sheriff of each county which shall form a part thereof, a notice in writing, specifying the number of the district and the name of the member or members, whose term of office will so expire.

SEC. 13. All special elections for county officers and the filling of all vacancies at a general election, shall be ordered by the sheriff of the county, which order shall be countersigned by the clerk of the board of county commissioners; in all other cases of special elections, they shall be called by the governor.

SEC. 14. Every order or writ issued for a special election, shall specify the county or district in which such election is to be held, how the vacancy occurred, the name of the officer in whose office it occurred, the time when his term of office would have expired, and the day on which such election is to be held, which shall not be less than twenty nor more than forty days from the date of the order or writ; and the same shall be forthwith delivered to the sheriff of the proper county, or in case of a vacancy in a district composed of more than one county, then to the sheriff of each county in such district.

SEC. 15. The county commissioners of the several counties in this territory, are hereby authorized to divide their respective counties into as many election precincts, for all general and special elections, as they may think expedient for the convenience of the voters of said county; and to appoint as many sets of judges of elections to receive voters at the county seats, as they may think necessary; and shall designate the house or place in such precinct, and in the precinct including the county-seat, the house or houses, place or places, at which elections are to be holden; and the precincts and places of holding elections so established, shall so remain until changed by the board of county commissioners: *Provided, always*, That it shall be the duty of the county commissioners, at any time, to change any place of holding elections, upon a petition of a majority of voters residing within said precinct.

SEC. 16. The said board of county commissioners shall, respectively, at the last stated term preceding any election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election in each election precinct; and the clerk of said board shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff within twenty days after the receipt of said notice, to serve said notice upon each of the said judges of the election.

SEC. 17. The said judges of the election shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges of the election shall be and continue judges of all elections of civil officers to be held within their precinct, until other judges shall be appointed as hereinbefore directed, and the said clerks of election may continue to act as such during the pleasure of the judges of the election, and the board of county commissioners shall, from time to time, fill all vacancies which may take place in the office of judge of the election in any election precinct within their respective counties.

SEC. 18. If any person appointed to act as a judge of the election, as aforesaid, shall neglect or refuse to be sworn or affirmed to act in such capacity, the place of such person shall be filled by the votes of such qualified voters residing within the precinct, as may then be present at the place of election, and the justice or justices, person or persons, so elected or nominated to fill such vacancy or vacancies, shall be, and are hereby vested with the same power as if appointed by the board of county commissioners.

SEC. 19. Previous to any votes being taken, the judges and clerks of the election shall severally take an oath or affirmation, in the following form, to wit: I, A. B., do solemnly swear or affirm, that I will perform the duties of judge (or clerk, as the case may be), according to law, and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same.

SEC. 20. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed a judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oaths or affirmations to each other, and to the clerks of the election, and the person administering such oath or affirmation, shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

SEC. 21. At all elections to be held under this act, the polls shall be opened at the hour of eight in the morning, and continue open until seven o'clock in the afternoon of the same day, at which time the polls shall be closed: *Provided, however*, That if no judge shall attend at the hour of eight in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election as hereinbefore prescribed, the election may in that case commence at any hour before the time for closing the polls shall arrive, as the case may require, and, upon opening the polls, proclamation shall be made by one of the clerks, and thirty minutes before the closing of the polls, proclamation shall be made in like manner, that the polls will close in thirty minutes.

SEC. 22. Every elector shall vote by ballot and each person offering to vote shall deliver his ballot to one of the judges in presence of the board. The ballot shall be a paper ticket which shall contain written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person so named by him is intended to be chosen, but no ballot shall contain a greater number of names than there are persons to be chosen to fill such office.

SEC. 23. The names of all persons voted for by any elector at any general or special election, shall be on one ballot.

SEC. 24. It shall be lawful for any elector to vote for all territorial officers at any place of holding elections within the territory; for councilmen and representatives to the general assembly, at any place of holding an election within the council or representative district in which he resides; for sheriff, coroner, county commissioners and all other county officers, at any place of holding an election in the county in which he resides;

but for justices of the peace and constables, he shall not vote out of the precinct in which he resides.[4]

SEC. 25. If any elector shall vote more than once at any election held under the authority of this act, he shall be fined in the sum of one hundred dollars, to be recovered by indictment before any court of competent jurisdiction, and the whole of such fine shall be appropriated to the use of the county in which the offence may have been committed.

SEC. 26. When any person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the qualifications of age and residence, or either, or if his vote shall be challenged by any elector who has previously voted at such election, the judges of the election shall tender to such person the oath or affirmation in the following form: You do solemnly swear (or affirm) that you are resident of the county of ——, in the territory of Colorado; that you have resided in this territory six[5] months immediately preceding this election; that you have, to the best of your knowledge and belief, attained to the age of twenty-one years, and have not voted at this election, so help you God. Or if any person shall be challenged by any elector, as aforesaid, as being disloyal to the government of the United States, the judges of the election shall tender to such person the following oath: You do solemnly swear that you will support the constitution of the United States and the organic act of the territory of Colorado; that you will bear true faith and allegiance to the government of the United States, any ordinance, resolution or law of any state or territory, or of any convention or legislature thereof, to the contrary notwithstanding; that you have not, since the fifteenth day of March, one thousand eight hundred and sixty-four, knowingly aided, encouraged or assisted, and will not hereafter in any manner aid, encourage or assist any person or persons, nor the so-called Confederate States, nor any of them, in any act of rebellion against the government of the United States, and this you do without any qualification or mental reservation whatever, so help you God. And if the person to whom such oath shall be tendered, shall refuse to take the same, he shall not be allowed to vote at such election.[6]

SEC. 27. If any person so offering his vote at such election shall take such oath or affirmation, or shall offer to take such oath or affirmation as prescribed in the preceding section, his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges that such oath or affirmation is false; and if such person shall refuse to take such

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(4) Repealed by the act to create and establish a Board of Registry of Electors. See Sec. 18, p. 303.
(5) Act of March 11, 1864. Laws 1864, p. 80.
(6) Ibid.

oath or affirmation, his vote shall be rejected; and if any person shall take the oath or affirmation, as is before named, knowing such oath or affirmation to be false, he shall be deemed guilty of wilful and corrupt perjury, and punished accordingly.

SEC. 28. If any person shall vote at any election who is not a qualified voter, he shall forfeit and pay any sum not exceeding five hundred dollars, nor less than one hundred dollars, or by imprisonment in the county-jail for a term not to exceed six months nor less than three months, to be adjudged in the same manner as other penalties under this act.[7]

SEC. 29. For the preservation of order, as well as the securing of the judges and clerks of the election from insult and abuse, it shall be the duty of any constable or constables residing within the precinct, who shall be designated for the purpose by the judges of the election, to attend at all elections within his precinct, and should no constable attend at such election, the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the elections; and the judges are hereby empowered to impose a fine not exceeding twenty dollars, on any person who shall conduct in a disorderly or riotous manner, and persist in such conduct after having been warned of its consequences; and on refusal to pay the same, to commit him or them to the common jail of the county, for any time not exceeding twenty days, or until the fine shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute such order and receive such person or persons so committed, as though it had been issued or delivered by a magistrate, in due form of law. Should the fine be paid, the judges of election shall transmit the same to the county treasurer, who shall receipt to the judges of election, and place the amount in the common-school fund of his county.

SEC. 30. When the votes shall have been examined and counted, the clerks shall set down in their poll-books the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number he did receive, the numbers being expressed in words at full length, such entry to be made as nearly as circumstances will admit, in the following form, to wit: At an election held at the house of ——, in —— precinct, in the county of ——, and territory of Colorado, on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

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(7) Act of March 11, 1864. Laws 1864, p. 80.

—— had —— votes for delegate to congress; —— had —— votes for council; —— had —— votes for house of representatives; —— had —— votes for sheriff; —— had —— votes for county clerk; —— had —— votes for county treasurer; —— had —— votes for county commissioners; —— had —— votes for probate judge; —— had —— votes for county superintendent; —— had —— votes for coroner; —— had —— votes for surveyor; —— had —— blank votes for county assessor; —— had —— votes for county attorney; —— had —— votes for justice of the peace; —— had —— votes for constable. Certified by us, A. B., C. D., E. F., judges of election. Attest, G. H., I. J., clerks of the election.

SEC. 31. The judges of the election shall then inclose and seal one of the poll-books under cover, directed to the clerk of the county in which such election is held, and the packet thus sealed, shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot agree otherwise, and delivered to the said clerk of the county, at his office, within six[8] days from the closing of the polls. And if any judge or clerk of an election, after having been deputed by the judges of the election at which he served as judge or clerk, to carry the poll-book of such election to the clerk of the county, shall fail or neglect to deliver such poll-book to the said clerk, within the time prescribed by law, safe, with the seal unbroken, he shall, for every offence, forfeit and pay the sum of five hundred dollars for the use of the county, to be recovered in the name of the commissioners of the county, by an action of debt, in any court of competent jurisdiction: *Provided*, That informality in the delivering of the poll-books, as directed by this section, shall not invalidate the vote of any precinct, when said poll-books shall have been delivered previous to the transmission by the clerk of the abstract of the returns to the secretary of the territory.[9]

SEC. 32. On the tenth[10] day after the close of the election, or sooner, if all the returns be received, the clerk of the county, taking to his assistance two justices of the peace of his county, shall proceed to open the said returns and make abstracts of the votes in the following manner: The abstract of votes for delegate to congress shall be on one sheet, and the abstract of votes for members of the council and house of representatives of the legislative assembly shall be on another sheet, and the abstract of votes for county officers shall be on another sheet; and it shall be the duty of the said clerk of the county, immediately to make out a certificate of election to each of the per-

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(8) Act of March 11, 1864. Laws 1864, p. 80.
(9) Ibid.
(10) Ibid.

sons having the highest number of votes for[11] county officers, respectively, and deliver such certificate to the person entitled to it, on his making application for that purpose, to the clerk, at his office.

SEC. 33. It shall be the duty of the clerk of each county, on the receipt of the election returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of each election may be entitled for their services, and lay the same before the board of county commissioners at their next meeting; and the said board shall order the compensation aforesaid to be paid out of the county treasury.

SEC. 34. The clerk of the county, immediately after making out abstracts of votes given in his county, shall make a copy of such abstract and transmit the same by mail, or by some safe conveyance, to the office of the secretary of the territory.

SEC. 35. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory within thirty days after the election, the said secretary shall forthwith send a messenger to the county clerk of such county, whose duty it shall be to furnish such messenger with a copy of such return; and the said messenger shall be paid out of the territorial treasury, the sum of two dollars per day, and fifteen cents per mile, for each mile he shall necessarily travel in going to and returning from the office of said clerk.

SEC. 36. The secretary of the territory, auditor, treasurer, or any two of them, in the presence of the governor, shall proceed, within fifty days after the election, and sooner, if all the returns be received, to canvass the vote given for all territorial officers and members of the council and house of representatives, and the governor shall give a certificate of election to the persons having the highest number of votes for each office.[12] In case there shall be no choice, by reason of any two or more persons having an equal number of votes for the same office, the governor shall call a special election, in the manner provided in this act.

SEC. 37. Elections to fill vacancies in either branch of the legislative assembly, occurring during the session of the legislature, may be held on such notice, not less than five, nor more than twenty days, as the governor may direct in the writ of election to fill such vacancy.

SEC. 38. If any judge of the election, or clerk, or any other officer or person, in any manner concerned in conducting the election, shall wilfully neglect, improperly delay, or refuse to perform any of the duties required by this act, after having

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(11) Act of February 9, 1865. Laws 1865, p. 60.
(12) Ibid.

undertaken to perform such duties, he shall forfeit and pay to the territory the sum of fifty dollars; and if any such judge of the election, clerk, or other officer or person in anywise concerned in conducting the election, shall knowingly admit any person to vote, not qualified according to law, or shall knowingly receive and count more than one vote from one person at the same election, for one office, or shall be guilty of fraud, corruption or partiality, or manifest misbehavior in any matter or thing relating to said election, each and every person so offending shall forfeit and pay to the county the sum of one hundred dollars, to be recovered in any court of record in the territory, in the name of the territory, for the use of the county, in an action of debt, with costs of suit, or at the suit of any person who may sue for the same, one half for the use of the person suing, and the other half for the use of the county; and every such person so offending shall, on conviction, be rendered incapable of holding any office within this territory.

SEC. 39. Nothing in this act shall be so construed as to prevent the judges of election from refusing to receive the vote of any person, when it shall be proved to the satisfaction of a majority of them, that in taking the said oath he shall have sworn falsely. And if any judge of election shall order to be received the vote of any person who, being challenged, shall not take the oath or affirmation prescribed by law, such judge of election so offending, shall forfeit and pay the sum of fifty dollars, to be recovered by an action of debt, in the name of the territory, or of any person suing therefor, the one half of said fine for the use of common-schools, and the other half for the use of the person suing.

SEC. 40. If any judge or judges of election shall refuse to receive the vote of any elector, according to the first section of this act, who shall comply or offer to comply with the twenty-sixth section of this act, then every judge or the judges so refusing or neglecting to receive the vote of the person aforesaid, and to record it as a legal vote, shall be liable to be indicted, and on conviction, be fined five hundred dollars, and imprisoned not exceeding thirty days.

SEC. 41. If the county clerk shall neglect or refuse to perform the duties as pointed out in this act, he shall be liable to be indicted, and on conviction, shall be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding thirty days.

SEC. 42. If any person shall mutilate or erase any name, figure or word in a poll-book taken or kept at any election, or if any person shall take away such poll-book from the place where it has been deposited for safe-keeping, with an intention to destroy the same, or to procure or prevent the election of any person; or if any person shall destroy any poll-book so taken and kept at any election, he or she shall be liable to be indicted, and on conviction, shall be fined not exceeding five hundred dollars, and imprisoned not exceeding sixty days in the county-jail.

SEC. 43. The board of county commissioners in each of the several counties of this territory, at their April meeting in each and every year, shall cause a suitable number of blank forms of poll-books and election returns to be made out, headed and certified, as the case may be, for each board of election in each precinct, township or place, which they shall cause to be delivered into the hands of the sheriffs of said counties, whose duty it shall be to deliver them to the judges or boards of election, at least ten days previous to the next election then to be held.

SEC. 44. The board of county commissioners shall provide a suitable number of ballot-boxes, at the expense of the county, for the several boards or judges of election, to be kept by one of the judges or board, each of which said ballot-boxes shall be furnished with a sufficient lock and key, and shall be delivered over to the successors of such judges or board. And before any ballot shall have been deposited therein, the same shall be opened and exhibited, to the end that the judges and clerks assisting at every election, may see that no ballot is in said box, after which the same shall be locked, and the key delivered to one of the judges or board of election, and shall not be opened during the said election, except for the purpose and in the manner herein provided. An opening shall be made in the top or lid of each of such ballot-boxes, not larger than shall be sufficient to admit a single closed ballot, to be inserted therein at one time, through which each ballot shall be deposited.

SEC. 45. Each clerk of the election shall keep a poll-book, which shall contain one column headed "names of voters." The name of each elector voting shall be entered by such clerk, in regular succession under the said heading in his poll-book. At each adjournment of the polls, and upon the final closing of the same, the clerks shall, in the presence of the judges or board of election, compare their respective poll-books, and correct all mistakes that may be discovered, according to the decisions of the judges of election, until such poll-books shall be made to correspond in all respects; the ballot-box shall then be opened, and the said poll-books placed therein; the box shall then again be locked, and the seal of one or more of the judges shall be so placed thereon as entirely to cover the opening in the top of the lid or top of said box; the key of said box shall then be delivered to one of the judges, and the box to another; the judge having the key shall keep the same in his own possession, and deliver it again to the board at the next opening of the poll; the judge having the box shall carefully keep it, without opening it or permitting it to be opened, or the seal thereof to be broken or removed, and shall publicly deliver it in that condition to the board, at the next opening of the polls.

SEC. 46. As soon as the polls at any election shall have finally closed, the judges or board and clerks shall proceed to canvass the votes polled, by first counting the whole number of ballots in the box; if the ballots shall be found to exceed the number of names entered on each poll-book, they shall be replaced in the box, and one of the judges shall publicly draw out and destroy so many ballots, unopened, as shall be equal to such excess, and the ballots and poll-books agreeing, or being made to agree, the board shall proceed to count and publish the vote.

SEC. 47. As the judges or board of election shall open and read the ticket, each clerk shall carefully mark down the votes each candidate shall receive, in separate columns prepared for that purpose, with the name of such candidate at the head of the column, and the office or place it is designed by the voters such candidate shall fill; but if on such canvassing, two tickets shall be found deceitfully folded together, they shall both be rejected, as if the same had never been deposited in the ballot-box.

SEC. 48. As soon as all the votes shall have been read off and counted, the judges or board of election shall make out a certificate under their hand, as provided in section thirty of this act.

SEC. 49. This act shall take effect and be in force from and after its passage.

An act to provide for Contested Elections.

[*Approved October* 31, 1861. *Laws* 1861, *p.* 47.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 50. (I.) That if any candidate or elector of the proper county or representative or council district chooses to contest the validity of any election or the right of any person proclaimed duly elected to his seat in the council or house of representatives, such person shall give notice thereof in writing to the person whose election he intends to contest, or leave a written notice thereof at the house where such person last resided, within twenty days after the vote of the election shall have been canvassed by the territorial board of canvassers,[13]

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(13) Act of August 14, 1862. Laws 1862, p. 65.

expressing the points on which the same will be contested, and the names of two justices of the peace who will officiate at the taking of the depositions, and when and where they will attend to take the same; and such notice shall be served at least ten days before the day so pointed out therein for the taking of the depositions.[14]

SEC. 51. (II.) That the said justices or either of them shall have power, and are hereby authorized and required to issue subpœnas to all persons whose testimony may be required by either of the parties, and the said two justices when met, shall hear and certify under seal all testimony relative to such contested election, to the speaker of the branch of the legislative assembly where the person whose seat is contested, may be returned to served at the next session.

SEC. 52. (III.) That no person shall contest the election of any member of the council or house of representatives, unless he is an elector of that county or district from which the person is returned to serve; no testimony shall be received by the justices on the part of the person contesting the election, which does not relate to the point specified in the notice, a copy of which notice shall be delivered to the said justices and by them transmitted to the speaker of that branch of the legislative assembly where the contest is to be decided, with the other documents.

SEC. 53. (IV.) That the method to be pursued in contesting the election of persons declared duly elected sheriff, coroner, county auditor, county recorder, county treasurer, county commissioner or county assessor or other county officers, shall in every respect be similar to the method directed as aforesaid to be pursued in contesting the election of members of the council and house of representatives of the legislative assembly, save only that the testimony taken as aforesaid, and all matters relative to such contest, shall be sent to the probate court of the proper county on or before the second day of the term next ensuing the thirty days allowed in which to take depositions, by the preceding sections, and the said probate court, at the said first term after thirty days shall have expired, shall hear and determine the contest.

SEC. 54. (V.) That the judge who carries the poll-book to the clerk of the probate court of the proper county shall be entitled to receive for the same, twenty cents per mile from the place of election to the seat of justice, to be paid out of the county treasury.

SEC. 55. (VI.) That if any officer charged with any duties under this act shall refuse or neglect to perform the duties re-

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(14) Act of August 14, 1862. Laws 1862, p. 65.

quired of him by this act, according to the true intent and meaning thereof, he shall, on conviction thereof before any court having cognizance to that amount, be fined in any sum at the discretion of the court, not exceeding two hundred dollars.

SEC. 56. (VII.) That all fines and penalties imposed by this act, shall be recovered with costs of suit, in an action of debt, for the use of the county.

SEC. 57. (VIII.) This act shall take effect and be in force from and after its passage.

An act to provide for Vacancies in the Legislature.

[*Approved November* 6, 1861. *Laws* 1861, *p.* 109.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 58. (I.) If any member elected to either house of the legislative assembly shall resign during the recess thereof, he shall address and transmit his resignation in writing to the governor, and when any such member shall resign during any session, he shall address his resignation in writing to the presiding officer of the house of which he is a member, which shall be entered on the journals, in which case, and in all cases of vacancies happening or being declared during any session of the general assembly by death, expulsion or otherwise, the presiding officer of the house in which such vacancy shall happen, shall immediately notify the governor thereof.

SEC. 59. (II.) Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess, he shall without delay issue a writ of election to supply such vacancy.

SEC. 60. (III.) When any vacancy shall happen in the council for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when such vacancy shall happen in a council district which shall have been divided or altered after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house for any county which shall have been divided after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

SEC. 61. (IV.) The sheriff to whom any writ of election shall be delivered shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice or notices for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be set up and the election to be held accordingly, in such parts of their respective counties as composed part of the old county or district for which the election is to be held at the last preceding general election, and returns shall be made and the certificate of election granted in all things as if no division had taken place.

SEC. 62. (V.) When any district or county shall be so altered or divided during the term for which a member shall be elected, and the new district or county shall be authorized to elect their member before the expiration of the term of the former member, in that case the election to fill the vacancy shall be held for the district or county as it shall remain after such alteration or division, and not as it was at the last preceding general election.

SEC. 63. (VI.) This act to take effect and be in force from and after its passage.

An act to create and establish a Board of Registry of Electors.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 64. (I.) That the persons authorized by law or appointed by the board of county commissioners of the several counties of this territory to act as judges of the election in the several election precincts of said counties, shall constitute a board of registry for their respective precincts, and shall meet on Tuesday, three weeks preceding the day upon which the general election for territorial and county officers shall by law be appointed to be held, at nine o'clock a. m., and proceed to make a list as hereinafter prescribed, of all persons qualified and entitled to vote at the ensuing election in the precinct of which they are judges; which list when completed shall constitute the registry of electors of said precinct; whenever at the last election of said precinct, prior to said meeting, the number of votes cast in said precinct exceeds three hundred, the said board may continue the session for the purpose of making said list, ten days, if necessary.

SEC. 65. (II.) Said registers shall each contain a list of the persons so qualified and entitled to vote in said precincts, alphabetically arranged according to their respective surnames, so as to show in one column the name at full length, and in another column the residences by the name of the street or other location of the dwelling-place of each person, where he resides in a city or village having streets laid out and named. It shall be the duty of the said board to enter in said lists the names of all persons residing in their precinct, whose names appear on the poll-list kept in said precincts at the last preceding election, together with the name of the street or locality where they reside, when the same is known or can be ascertained by said board; and for this purpose said board are authorized to take from the office of the county clerk the poll-lists filed therein by the judges of the said precincts at the election held next prior to the making of such register. The said board shall also enter upon said list the names of all persons who are known by them to be electors in said precinct, and shall omit therefrom all persons known to have died or removed from said precinct, whose names appear on said poll-list of said prior elections. The said board shall complete as far as practicable said register on the day of their meeting as aforesaid, and shall make four copies thereof, and certify the register and each of the copies to be a true list of the voters in their precinct, so far as the same are known to them; and one list shall be forwarded to the county clerk of the proper county to be filed by him together with the returns of election, as now provided by law; two copies of said list shall be kept by said judges and carefully preserved by them for their use on the days hereafter mentioned, for the revision and correction of the same. One copy of said list shall within two days be posted in some conspicuous place where the last preceding election was held, and be accessible to any elector who may desire to examine or copy the same. Any person who shall, previous to the closing of the polls of the election immediately following the posting of any registry list, take down, tear down, deface or in anywise cover up or obscure said list, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars, or by imprisonment in the county-jail for not less than sixty days, or by both such fine and imprisonment. The board of county commissioners may, in their discretion, cause printed copies of said lists to be posted up in such places as they may direct, and may cause the same to be published in some newspaper published in the county in which such precinct is situated, at an expense not exceeding two cents for each name on said list.

SEC. 66. (III.) The board of county commissioners of the several counties of this territory shall, on or before the first Tuesday of July, 1868, designate the boundaries of the said several election precincts in their respective counties, making them conform as near as may be to the divisions heretofore made, but bounding them when practicable by right lines and well-established and well-known land-marks, as those of roads and gulches, &c., which said designation of said precinct shall be reduced to writing and filed with the county clerk of the proper county and recorded by him; and in those counties wherein there is published a paper, the same shall be published in some newspaper of said county; and for this purpose the county clerk shall furnish to the paper designated by the said board of county commissioners a certified copy of the order laying off and designating the boundaries of said precinct.

SEC. 67. (IV.) In case a new election precinct shall be formed under the provisions of section three, or at any time hereafter by said board, the said board of county commissioners shall immediately thereafter, and before the day of the meeting of the registers mentioned in the first section of this act, appoint three competent persons, being residents and house-holders of said precinct, to act as registers of said precinct, who shall on the day mentioned in the first section of this act proceed to make a list of the electors of such precinct from the best means at their command; said list shall embrace only the names of such persons as are known to them to be electors in their precincts, and such as shall have taken the oath hereinafter mentioned before such board of registers, which said list shall be filed and the copies thereof retained and posted as prescribed in the second section of this act, and shall be corrected in the same manner as other lists are corrected; and in case of a division of any election precinct by the laying off of such precinct as contemplated in section three, so that any elector heretofore voting in one precinct shall by such designation of boundaries be known to be a resident of another, it shall be the duty of the registers of such precinct where he has formerly voted to omit such name or names from the list of said precinct, and the said registers of precincts, composed in part of other precincts, and having electors therein whose names appear on the poll-lists of other precincts, shall immediately, upon the completion of the list, and before the same is filed or posted, meet the registers of the precincts of which theirs was formerly a part and compare their respective lists, and the said registers whose list is made from the poll-books of the preceding election shall strike from their said list the names of all persons found on the list of such other precinct or precincts, and in case of such division as aforesaid, the precincts which shall by said board of commissioners be designated by name of precinct as it heretofore existed, shall be entitled to the poll-list of the last preceding election.

SEC. 68. (V.) The said board of registry shall meet on Tuesday of the week preceding each general or municipal election in their respective precincts, at the place designated for holding the polls of the election, for the purpose of revising, correcting and completing said lists; and for this purpose they shall in cities, towns and in the mining counties of this territory meet at nine o'clock a. m., and remain in session until nine p. m. of that day; and at other precincts they shall meet at nine o'clock a. m., and remain in session until four o'clock p. m. of that day.

SEC. 69. (VI.) The proceedings of said board of registry shall be open the week preceding each general or municipal election, and all persons residing and entitled to vote in said precinct shall be entitled to be heard by said board in relation to the correction or addition to said list. One of the said lists so kept by said judges as aforesaid, shall be used by them on the day of making corrections and additions for the purpose of completing the registry for such precinct.

SEC. 70. (VII.) It shall be the duty of said board at their meeting to revise and correct said lists, to erase therefrom the name of any person inserted therein whom they know or who shall be proved by the oath of a known legal voter or voters of said precinct to the satisfaction of said board to be a non-resident of said precinct, or otherwise not entitled to vote in said precinct at the election then next to be held. Any elector residing in said precinct and entitled to vote at the election then next to be held, may appear before said board and require his name to be recorded on said alphabetical list. Any person so requiring his name to be so entered on said list, shall give the location of his place of residence within said precinct as near as may be, and shall be subject to the same penalties for refusing to give them, as for falsely giving the same, as by the provisions of this act are hereinafter provided for an illegal registry; and such person shall also be subject to challenge, either by the judges or by any elector whose name appears on said list: *Provided*, That the name of no person shall be added to said list unless the said person shall be known to the judges to be a resident of said precinct, and entitled to vote therein at the next election, except upon the oath of such person that he is or will be of the age of twenty-one years, and entitled to vote at the election then next to be held in such precinct.

SEC. 71. (VIII.) After said lists shall have been fully completed, the said board shall within three days thereafter cause four copies of the same to be made, each of which shall be certified by them to be a correct list of the voters of their precinct, one of which shall be filed in the office of the county clerk of the county, and two of which shall be delivered to the persons appointed to act as judges of the election at the then next election, provided new judges shall have been appointed, and one copy to be posted on the door of the room in which the polls are appointed to be held, or on the door of the rooms at which the last preceding election was held. It shall be the duty of the judges receiving such list to carefully preserve the same for their use on election day, and to produce the same at the opening of the polls of such election, and to designate two of their number at the opening of the polls to check the name of every voter voting in such precinct, whose name is on the list. No vote shall be received at any general or municipal election if the name of the person offering to vote be not on said register made on the Tuesday or Wednesday of the week preceding the election, unless the person offering to vote shall furnish to the judges of election his affidavit in writing, signed by him and stating that he is of the age of twenty-one years, and has been a resident of the county wherein he offers to vote for one month last preceding the present election, and of the precinct ten days previous thereto, and that he is entitled to vote at such election, and shall prove by the oath of a registered voter or voters of such precinct that such person is a resident of said precinct, and has been for ten days previous to the day of election; said affirmation may be made before any person authorized to administer oaths, and said oath and affirmation may be administered by one of the judges of election, but no person shall be allowed to take compensation for such oath; said affirmation shall be preserved and filed in the office of the county clerk, together with the poll-lists of said election, and the clerk of such election shall in addition to the duties now prescribed by law, enter upon the poll-list kept by them the name of such person and his residence as given by him, and mark opposite the name of such person the words, "not registered," and also the name of the witness upon whose oath such vote is taken; and any person who shall knowingly make a false statement as to his residence or qualification as a voter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, or by imprisonment in the county-jail for a period of thirty days, or by both such fine and imprisonment.

SEC. 72. (IX.) In case of vacancy in the office of judges of election occurring at the time mentioned in the first section of this act, as the day of meeting of such board for the first time, such vacancy may be filled by the board of county commissioners, or by the electors present, in the same manner as such judges may now be appointed on the day of election. Every board of registry when convened, and before they shall proceed, to make out the list as aforesaid, shall severally take an oath or affirmation in the following form: I, A. B., do solemnly swear (or affirm) that I will perform the duties of register of this election precinct according to law and the best of my ability, so help me God.

SEC. 73. (X.) The said lists of electors shall at all times be open to public inspection at the office in which they are filed, without charge.

SEC. 74. (XI.) The members of said board of registry shall each receive the same compensation as is now allowed by law for judges of elections for each day actually employed in the making and completion of the registry, to be paid to them at the time and in the manner in which they are now to be paid their other fees.

SEC. 75. (XII.) Any person who shall cause his name to be registered in more than one election precinct, or who shall cause his name to be registered, knowing that he is not a qualified voter in the precinct where said registry is made, or who shall falsely personate a registered voter, and any person causing, aiding or abetting any person in any manner in either of said acts, shall be punished for each and every offence, upon conviction thereof, by imprisonment in the county-jail for a period of not less than six months, and a fine of not less than one hundred dollars. All intentional false-swearing before said board of registry, shall be deemed wilful and corrupt perjury, and on conviction punished as such. If any member or officer of said board shall wilfully violate any of the provisions of this act, or be guilty of fraud in the execution of the duties of his office, he shall upon conviction thereof, be punished by imprisonment for a period of not less than six months, or a fine of not less than two hundred dollars, or by both such fine and imprisonment.

SEC. 76. (XIII.) It shall be the duty of the secretary of the territory to make out a complete form of a registry book, alphabetically arranged, with the oath of the registers in blank and the requisite blank columns properly headed, and to send printed copies thereof to the county clerk of each county within a reasonable time after the passage of this act, to the end that the registers throughout the territory shall be uniform.

SEC. 77. (XIV.) It shall be the duty of the county clerk of each county to furnish annually three printed copies of said blank registries for each precinct in their respective counties, at least thirty days before the day of each general election, for the use of the registers of the said precincts, to be delivered to the judges of election by the sheriff at the time of serving notice on said judges, which notice shall be served prior to the day of the first meeting of the board of registry.

SEC. 78. (XV.) The persons appointed judges of election in every incorporated city, hereafter at each municipal election, shall meet on the Tuesday of the week preceding said municipal election in their respective precincts at the place for holding the polls therein, for the purpose of revising, correcting and completing the annual registry lists in this act required to be made, and they shall for that purpose be authorized to take from the office of the county clerk the last annual registry of electors.

SEC. 79. (XVI.) The said registers shall in all respects proceed in the revision and correcting of the respective registries of their precincts as is hereinbefore provided for in the revision and correction of the annual registries, except that the list or registry so revised and corrected shall be filed with the respective city clerks. The registries authorized to be taken from the office of the county clerk, shall after the same shall be revised and corrected, be returned to the county clerk to be filed by him.

SEC. 80. (XVII.) The same proceedings shall be had in all cases of special elections whatever, as is provided in the last preceding section, so far as the same shall be applicable thereto.

SEC. 81. (XVIII.) Section numbered twenty-four of "An act regulating elections," approved November sixth, one thousand eight hundred and sixty-one, and also all acts and parts of acts inconsistent herewith, are hereby repealed.

SEC. 82. (XIX.) This act shall be taken and held to apply to all special or municipal elections which may be held in this territory prior to the next general election; and in case of a special election to be held prior to the next general election, it shall be the duty of the board of commissioners of the several counties to appoint the judges of the precincts in their counties within the same period provided in this act to be done prior to the general election; and in case of any municipal election to be held prior to the next general election, the judges in the respective precints shall cause a register of all the qualified electors to be made in the manner now provided to be done by the registers prior to the general election; and the said election precincts as now established by law, shall be and remain the election precincts at any special or municipal election to be held prior to the first Tuesday of July, A. D. 1868.

SEC. 83. (XX.) This act shall take effect and be in force from and after the first day of February, A. D. 1868.

An act repealing a certain act relating to Elections, and providing the time for holding the General Elections, and reviving section twelve of An act regulating Elections. Approved November 6, 1861.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 84. (I.) That an act amendatory of an act entitled an act regulating elections, approved January 24, A. D. 1866, be and the same is hereby repealed.

SEC. 85. (II.) That section twelve of an act regulating elections, approved November 6, A. D. 1861, is hereby revived and in full force.

SEC. 86. (III.) The general elections shall be held in the several precincts or wards in this territory on the second Tuesday of September in each year, at which time there shall be chosen so many of the officers as are now required to be elected in each year by the provisions of the existing laws respecting elections.

CHAPTER XXIX.

ESTRAYS.

SECTION
1. No person to take up estray animal except a householder, in county of his residence; *proviso.*
2. Estray animal not to be taken up during certain months, in the counties where by law permitted to run at large, unless trespassing within an enclosure.
3. Persons taking up an estray to post three notices; if estray not called for in ten days, to go before justice of the peace and make affidavit describing estray, etc.; affidavit to be sufficient evidence of the advertisement required hereby.
4. Justice to issue warrant of appraisement, to appraisers, unless attendance may be otherwise had; appraisers to report appraisement to justice, who shall enter the same on his docket.
5. Justice to post notices, with description of estray, etc.
6. Shall transmit copy of appraisement to county clerk.
7. County clerk to record appraisement in estray register, and transmit same to secretary of territory, who shall also record same.
8. All animals taken up at same time to be appraised together.
9. Claimant of estray to make affidavit of ownership, etc., and pay to finder the amount of fees advanced by him, with his charges for keeping estray; charges how assessed in case of difference.
10. If estray not claimed in one year, and value do not exceed $50, title to vest in finder, he having observed the provisions of this chapter.
11. If appraised value exceed $50, estray to be sold; proceedings in such case; proceeds of sale, after paying costs and expenses, paid to county treasurer.
12. All moneys so paid to treasurer to be retained for one year, and paid to owner of the estray on proof of his claim, and on the order of the county commissioners; if not claimed within one year, to be paid into school-fund.
13. Justice to deliver certificate describing estray sold, to the county treasurer.
14. Fees of justice, appraisers, secretary and county clerks; fees of justices and appraisers to be paid by finder, and to be a lien upon the estray.
15. Lost goods to be taken up, appraised and sold in same manner as estrays.
16. Taking up estrays by person not authorized, or failing to advertise or appraise same, or working estray imprudently, or failing to feed same; penalty.
17. Concealing estray or lost goods, effacing brands, carrying estray beyond territory, failing to cause estray to be sold; penalty.
18. Justice failing to pay over money received from sale of estray; penalty.
19. Finder may work estray in a careful manner; not to receive compensation for keeping estray while working same
20. Finder not liable if estray die, or be stolen or lost without his fault.

SECTION 1. No person shall take up any estray animal except in the county wherein he resides, and is a householder, nor unless the same be found in the vicinity of his plantation, or place of residence: *Provided,* That this shall not be so construed as to prevent the taking up of any estray found in the uninhabited parts of the territory, and at the distance of ten miles from any habitation.

SEC. 2. No person shall take up any estray animal mentioned in the next section, in any county wherein the same is by law permitted to run at large, except during the months of November, December, January, February, and March, unless the same is found trespassing upon the plantation, or within the inclosure of the person taking the same up.

SEC. 3. Every person who shall take up any estray horse, mare, colt, mule, ass, or any head of neat cattle, sheep, hog, or goat, shall, within five days thereafter, give notice of the finding and taking up of such animal, by posting a written advertisement thereof, with a description of such estray, and the marks and brands thereon, in three public places in the county wherein he resides, and if the same be not called for or claimed by any person, within ten days after the posting of such notices, the person taking up such estray animal, shall go before some justice of the peace of the county wherein he resides, and make oath that such animal was found estray, by him, and the place where the same was found, that the marks and brands thereon have not been effaced or altered by him since the taking up, and that he hath duly advertised the same as required by law; every such affidavit shall be made and subscribed in the docket of such justice, and shall be sufficient proof of the advertisement of such estray as herein required.

SEC. 4. Such justice of the peace shall thereupon issue his warrant to three disinterested householders of the county, unless their attendance may be otherwise had, commanding them to attend at such place as may be therein mentioned, to appraise such estray; the appraisers so appointed, or any two of them, shall thereupon proceed to appraise such estray, and, upon the completion of such appraisement, shall attend before the justice, and report their appraisement; and the justice shall thereupon enter such appraisement upon his docket, in the form of an affidavit, or certificate of the appraisers, setting forth a description of the estray appraised, the marks, and brands thereon, the name and place of residence of the person taking the same up, and that the appraised value of such estray is a fair and true valuation thereof; and such affidavit shall thereupon be subscribed by the appraisers, and sworn to before the justice.

SEC. 5. Upon the completion of such appraisement as aforesaid, the justice of the peace before whom the appraisement is had, shall forthwith post, in three of the most public places in his neighborhood, a notice of the taking up of such estray, with a description thereof, and of the marks and brands thereon, and the name and place of residence of the person taking the same up.

SEC. 6. Such justice shall also transmit a copy of such affidavit or certificate of the appraisers, certified by him to be a true copy from his docket, to the county clerk of his county, within ten days after the completion of such appraisement.

SEC. 7. Every county clerk, upon receiving any such certified copy of any such appraisement, shall forthwith cause the same to be recorded in a book to be kept in his office, to be entitled the "estray register," and shall thereupon transmit the same, by mail or otherwise, to the secretary of the territory, who shall cause the same to be, in like manner recorded, and shall file the same in his office.

SEC. 8. If two or more animals are taken up at the same time, by the same person, both, and all therof, shall be included in the same advertisement and appraisement; and the same fees are allowed as for the advertisement or appraisement of one estray.

SEC. 9. Whenever any person shall appear and make claim to any estray so taken up, such claimant, and the person taking up such estray, shall go before the justice of the peace, before whom such appraisement was had, or some other justice of the peace of the county, and such claimant shall make affidavit in writing, subscribed by him, setting forth his name and place of residence, and that he is the owner of such estray, describing it, and, thereupon, the person taking up such estray, shall be authorized to deliver the same to such claimant, upon payment of all fees advanced by him in accordance with this chapter, and his reasonable charges for keeping and caring for such estray. If the parties cannot agree as to the amount of such charges, the same shall be assessed by such justice of the peace, and such assessment shall be final. Every affidavit required by this section, shall be made and recorded upon and within the docket of such justice of the peace.

SEC. 10. If any such estray be not claimed and taken away within one year after the appraisement thereof, as hereinbefore provided, and if the person taking up such estray shall have caused the same to be advertised and appraised as provided by sections three, four, and five, and shall not, in other respects, have violated the provisions of this chapter, and if the appraised value of such estray does not exceed fifty dollars, the property therein shall immediately vest in the person taking the same up.

SEC. 11. If the appraised value of any estray exceeds fifty dollars, and the same is not called for within one year after the appraisement thereof, the person taking up such estray, shall notify some justice of the peace of the county, and such justice shall appoint a day and place for the sale thereof, and cause notices of such sale to be posted in three public places in the county, at least ten days before such day so appointed; and upon the day appointed, the person taking up such estray, shall have the same present at the place fixed by the justice, and the justice shall proceed to sell such estray at public auction, for cash, and after paying the proper fees and charges for taking up such estray, and caring for and keeping the same, to be fixed by such justice, and the fees advanced for the appraisement and advertisement of such estray, as herein provided, and after deducting the fees allowed such justice for such sale and the advertisement thereof, the residue of the proceeds of such sale shall be paid to the county treasurer, who shall receipt to the justice therefor.

SEC. 12. All moneys so deposited with the county treasurer shall, by him, be retained in the treasury for one year thereafter, separate and apart from all other moneys; and if the owner of any such estray, so sold as aforesaid, shall, within such period, appear before the board of county commissioners and establish his title to such estray, such board of commissioners shall order the amount so paid into the treasury, to be refunded to such owner; if no such owner appear within one year after the deposit of any sum of money, as herein provided, the same shall be passed to the school-fund of the county, and shall be accounted for and expended as other school-moneys are.

SEC. 13. Whenever any sum of money is paid into the county treasury by virtue of the eleventh section, the justice paying the same shall deliver to the treasurer a certificate setting forth a description of the estray from the sale of which the same was obtained, and the marks and brands on such estray, and the name of the person by whom such animal was delivered to him to be sold; and such certificate shall by the treasurer be filed and preserved in his office, to the end that the right of the owner of such estray to receive such sum of money may be readily established.

SEC. 14. The following fees are allowed for services performed under this chapter: To justices of the peace for issuing any warrant of appraisement, fifty cents; entering the affidavit of the appraisers and receiving their oaths thereto, fifty cents; taking and entering the affidavit of the taking up of any estray, fifty cents; for posting advertisements as required hereby, and certifying a copy of the affidavit of the appraisers to the county clerk, fifty cents; advertising the sale of any estray, and selling the same, one dollar and fifty cents; to each appraiser, fifty cents; to the secretary of the territory and each county clerk for each inspection of the estray register to be kept in their respective offices, one dollar, which shall be in full of all fees for services required to be performed by them hereunder. The fees of justices of the peace and appraisers shall be paid by the person taking up the estray, but the same shall constitute a lien upon the estray, and shall be paid by the owner before he shall be entitled to take away such estray.

SEC. 15. The manner of taking up, appraising, advertising and disposing of any lost goods or personal property which may be found upon the highway, or in any other place, shall be the same as herein provided.

SEC. 16. If any person not authorized so to do, shall take up any estray beast, or lost goods; or if any person taking up any such estray, or any lost goods, shall wilfully neglect to cause the same to be advertised and appraised as herein provided, or shall work or use any such estray beast, except in a prudent manner and so as not to injure the same, or shall, when working such beast, fail to sufficiently feed and properly care for the same, every such person so offending shall forfeit twenty-five dollars to the owner of such estray, to be recovered by action of debt, before any justice of the peace.

SEC. 17. If any person shall attempt to conceal any estray or any lost goods found and taken up by him, or shall efface or change any brand or mark thereon, or carry the same beyond the limits of this territory, or knowingly permit the same to be done, or shall wilfully fail to cause the same to be sold when required hereby, every such person so offending shall forfeit a sum not less than twenty-five dollars, nor more than three hundred dollars, to be recovered by action of debt, or indictment, in any court of competent jurisdiction, one half to be paid to the informer, and the other half into the county treasury, for the benefit of the school-fund of such county. Every person convicted under the provisions of this section, shall be imprisoned in the common jail of the county until such fine is paid.

SEC. 18. Any justice of the peace who shall fail to pay over to the county treasurer any moneys arising from the sale of any estray, or any lost goods, under the provisions hereof, shall be liable to indictment, and upon conviction thereof, shall pay a fine of not less than fifty dollars, nor more than five hundred dollars, for the benefit of the common school-fund of the county.

SEC. 19. Any person taking up any estray beast may work and use the same in a prudent manner, and so as not to injure the same, but during the time of working or using such estray shall not be allowed to receive or charge any compensation for the keeping thereof.

SEC. 20. If any estray, after being duly advertised and appraised as provided in the third section, shall, without default of the person taking up the same, die or be stolen, or escape and wander away, the person taking the same up shall not be chargeable therefor.

Prior Statutes Repealed. An act concerning Lost Goods and Estrays. Approved November 4, 1861. Laws 1861, p. 59.

CHAPTER XXX.

EVIDENCE AND DEPOSITIONS.

SECTION
1. Printed statute books, and reports of decisions of the United States and territories, evidence.
2. Certified copies of proceedings of justices of peace; certificate of official capacity of justice required in other counties than where justice resides.
3. Certificate of any register or receiver evidence of any record in his office; register's certificate evidence of title; patent better evidence than such certificate.
4. An exemplification by the secretary of the laws of any state or territory on file in his office, evidence.
5. In trials of actions at law, plaintiff need not prove copartnership of plaintiffs; but defendant may plead in abatement, or prove non-joinder or misjoinder.
6. Plaintiff in actions on contract, not required in first instance to prove partnership, or joint liability of defendants, unless defendant deny joint liability, etc., under oath.
7. Certified copies of books and records of any town or city, to be evidence.
8. Deposition of non-resident witness how obtained.
9. Resident witnesses, deposition in chancery how obtained; deposition of like resident witnesses in suits at law, in what cases may be taken; notice to be given.
10. Examination of witness how conducted; deposition how certified; how addressed and returned; official character of justice of peace residing in a foreign state, to be certified.
11. Deposition to be read as evidence.
12. Officer taking deposition may compel the attendance of witness.
13. Fees of witnesses.
14. No party or attorney to dictate, write or draw up deposition; deposition so dictated or drawn up, or which shall be returned into court unsealed, or with seal broken, shall be rejected.
15. Depositions not to be opened, save on order of court.
16. Depositions may be read by either party.
17. Depositions to perpetuate the remembrance of facts, how taken.
18. Notice to be given in such case, as specified in section ten.
19. Depositions taken as specified in section ten.
20. When and in what cases such depositions may be used.
21. Notice how given, where adverse party and his attorney are non-resident.

SECTION 1. The printed statute books of the United States, and of the several states and territories, printed under the authority of such states and territories, the books of reports of decisions of the supreme court and other courts of the United States and of the several states and territories, published by authority of such courts, may be read as evidence, in all courts of this territory, of such acts and decisions.

SEC. 2. Copies of the proceedings and judgments before justices of the peace, certified by such justice or justices under their hands and seals, before whom such proceeding or judgment is had, shall be received as evidence of such proceeding or judgment; where such certified copy is to be used in any other county than where the justice resides, the same shall not be received as evidence, unless a certificate from the county clerk be thereto annexed, certifying that on the day the proceeding was had or the judgment rendered, such justice was a justice of the peace, duly commissioned and sworn.

SEC. 3. The official certificate of any register or receiver of any land office of the United States, to any fact or matter on record in his office, shall be received and held competent to prove the fact as certified.[1] The certificate of any such register, of the entry or purchase of any tract of land within his district, shall be deemed and taken to be evidence of title in the party who made such entry or purchase, or his heirs and assigns; but a patent for land shall be deemed and considered a better legal and paramount title in the patentee, his heirs or assigns, than such register's certificate of entry and purchase of the same land.[2]

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[1] As to the effect of this clause, see *Russell* v. *Whitesides*, 4 Scam. 7. *Delauny* v. *Burnett*, 4 Gilm. 487. *Aldes* v. *Abbot*, 23 Ill. 61.

The certificate of the register of a land office, that it appears by the records thereof that a prior incumbent had granted a certificate of entry and purchase to a person named, is not evidence of the title in such person to the land purchased. 23 Ill. 61.

The receiver's certificate of purchase, is not evidence of title. *Roper* v. *Clabaugh*, 3 Scam. 166. *Carson* v. *Merle*, 4 Scam. 363.

SEC. 4. An exemplification by the secretary of the territory, of the laws of the several states and territories, which may be transmitted by order of the executives or legislatures of such states, to the governor of this territory, and by him deposited in the office of the said secretary, shall be admissible as evidence, in any court of this territory.

SEC. 5. In trials of actions upon contracts, expressed or implied, where the action is brought by partners, or by joint payees or obligees, it shall not be necessary for the plaintiff, in order to maintain any such action, to prove the copartnership of the individuals named in such action, or to prove the christian or surnames of such partners or joint payees or obligees, but the names of such copartners, joint payees or obligees shall be presumed to be truly set forth in the declaration, petition or bill: *Provided*, That nothing herein contained shall prevent the defendant from pleading in abatement, as heretofore, or of proving on the trial either that more persons ought to have been made plaintiffs, or that more persons have been made plaintiffs than have a legal right to sue, in which event the defendant's right shall be as at common-law.[3]

SEC. 6. In action upon contracts, express or implied, against two or more defendants, alleged to have been made or executed by such defendants as partners or joint obligors or payors, proof of the joint liability or partnership of the defendants, or their christian or surnames, shall not in the first instance be required to entitle the plaintiff to judgment, unless such proof shall be rendered necessary by the filing of pleas denying the execution of such writing, verified by affidavit as required by law.[4]

(2) The signature must be proved to entitle the certificate to admission. *Fail* v. *Goodtitle*, Breese, 156.

An exemplification by the Commissioner of the General Land-Office of a Register's certificate there on file, is evidence of equal dignity with the original. *Lee* v. *Getty*, 26 Ill. 80.

As to the priority of the older of two conflicting certificates issued for the same land. See *Bruner* v. *Manlove*, 1 Scam. 156. *Isaacs* v. *Steele*, 3 Scam. 98.

The Register's certificate is admissible in connection with the patent to show the date of inception of the title. *Whitesides* v. *Divers*, 4 Scam. 337. *Lee* v. *Getty*, 26 Ill. 80.

(3) Plea of the general issue verified by affidavit, does not put in issue the partnership or joint right of the plaintiffs. *Heintz* v. *Cahn*, 29 Ill. 308.

But the statute does not apply where partners sue without alleging their partnership character, and on the trial prove a liability to the partnership. *Woodworth* v. *Fuller*, 24 Ill. 109.

This section applies both to actions commenced before justices of the peace, and to those originating in the district court. *Evans* v. *Fisher*, 5 Gilm. 571.

(4) In an action against several defendants, not sued as partners, the plaintiff declared upon an account stated, and on the trial offered in evidence a promissory note made "For the McH. Co. Print-

SEC. 7. Copies of all papers, books or proceedings, or parts thereof appertaining to transactions in their corporate capacity, of any town or city now incorporated, or that may hereafter be incorporated under any general or special law of this territory, certified to be true copies by the clerk or keeper of the same, under the seal of such town or city, or under the private seal of said clerk or keeper, if there be no public seal, the clerk or keeper also certifying that he is entrusted with the safe-keeping of the original, shall be received as *prima facie* evidence of the facts so certified in any court in this territory.

SEC. 8. When the testimony of a non-resident witness or witnesses shall be necessary in any civil cause depending in any court of law or equity in this territory, it shall be lawful for the party wishing to use the same, on giving the opposite party or his attorney,[5] ten days' previous notice,[6] together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's office a *dedimus potestatem* or commission under the seal of the court, directed to any number of persons not exceeding three, as commissioners, or to any judge or justice of the peace of the county where such witness may reside authorizing him or them to cause such witness or witnesses to come before him or them, at such time and place as he or they may appoint, and faithfully to take his, her or their deposition or depositions upon all such interrogatories as may be inclosed with, or attached to said commission, both on the part of the plaintiff and defendant, and none others, and to certify the same when thus taken, together with the said commission and interrogatories, into the court in which such cause shall be depending, with the least possible delay.

SEC. 9. When the testimony of any resident witness or witnesses shall be necessary in any suit in chancery[7] in this territory, it shall be lawful for the party wishing to use the same, to cause the deposition or depositions of such witness or witnesses to be taken, before any justice of the peace, notary-public, or clerk of

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ing Co.," and signed by a part of the defendants only: *Held* that to entitle plaintiff to recover, there must also be given proof of the joint liability; although there was no plea in abatement, denying it. *Petrie* v. *Newell*, 13 Ill. 648.

The word "implied" has reference to actions against partners sued as such. *Ibid.*

The plea must be verified by the affidavit of all the persons declared against, as jointly liable; those failing to unite in the affidavit admit the joint liability. *Stevenson* v. *Farnsworth*, 2 Gilm. 718.

But this is so only when the action is upon a writing; in all other cases the verification of one defendant, will be sufficient to put in issue the joint liability of all. *Warren* v. *Chambers*, 12 Ill. 127.

(5) Where there are several defendants joint debtors, the plaintiff desiring to take the deposition of a non-resident witness, must serve his notice upon each. *McConnel* v. *Stettinius*, 2 Gilm. 707.

(6) The commissioner need not be named in the notice; for even if named, the clerk may appoint another person. *Cole* v. *Choteau*, 18 Ill. 439.

(7) The complainant in a chancery suit may proceed to take depositions *de bene esse*, immediately upon the filing of his bill, and without an order of court. *Doyle* v. *Wiley*, 15 Ill. 576.

the district court of the county wherein such witness or witnesses shall reside, without being required to sue out a commission, or to file interrogatories for that purpose, on giving to the adverse party or his attorney reasonable notice of the time and place of taking the same;[8] and it shall also be lawful, upon satisfactory affidavit being filed, to take the depositions of witnesses residing in this territory, to be read in suits at law, in like manner as is above provided, in all cases where such witness or witnesses shall reside in a different county from that in which the court shall be held; is or are about to depart from this territory; is or are confined in jail on legal process; or is or are unable to attend such court on account of advanced age, or sickness, or other bodily infirmity: *Provided*, That such reasonable notice shall be intended to mean at least ten days, in all cases, and one day in addition thereto, Sundays inclusive, for every thirty miles travel from the place of holding the court to the place where such deposition or depositions shall be taken.

SEC. 10. Previous to the examination of any witness whose deposition is about to be taken as aforesaid, he or she shall be sworn (or affirmed) by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated,[9] whereupon the said commissioner or commissioners, judge, justice of the peace or clerk (as the case may be) shall proceed to examine such witness, upon all such interrogatories as may be inclosed with or attached to any such commission as aforesaid, and which are directed to be put to such witness; or where no such commission shall be necessary, upon all such interrogatories, as may be directed to be put by either party litigant, and shall cause such interrogatories,[10] together with the answers of the witness thereto to be reduced to writing in the order in which they shall be proposed and answered, and signed by such witness, after which it shall be the duty of the person or persons taking such deposition, to annex at the foot thereof, a certificate subscribed by himself or themselves, stating that it was sworn to[11] and signed by the deponent, and the time and place

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(8) The notice need not state the name of the officer before whom the deposition will be taken. *Patterson* v. *Hubbard*, 30 Ill. 202.

(9) Where the witness was sworn "to testify the truth, the whole truth, and nothing but the truth," *Held* not to invalidate the deposition. *Ballance* v. *Underhill*, 3 Scam. 457.

(10) It is unnecessary that the interrogatories should be copied into the deposition; it is sufficient if they are read to the witness, and referred to by number or other designation. *Hawks* v. *Sands*, 3 Gilm. 232.

(11) It is not necessary that the certificate should state when the witness was sworn; it will be presumed that the oath was administered to him previous to his examination. *Ballance* v. *Underhill*, 3 Scam. 457.

Nor is it fatal, that the certificate at the foot of the deposition entirely fails to show that the witness was sworn, if it elsewhere satisfactorily appear. *County of Greene* v. *Bledsoe*, 12 Ill. 272.

when and where the same was taken,[12] and every such deposition when thus taken and subscribed, and all exhibits produced to the said commissioner or commissioners, judge, justice of the peace or clerk as aforesaid, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any, shall be inclosed, sealed up, and directed to the clerk of the court wherein the action is pending, with the names of the parties litigant indorsed thereon:[13] *Provided,* That when any deposition shall be taken as aforesaid by any judge or justice of the peace, out of this territory, such return shall be accompanied by a certificate of his official character, under the great seal of the state, or under the seal of the proper court of record of the county or city wherein such depositions shall be taken.

SEC. 11. Every examination and deposition which shall be taken and returned according to the provisions of this chapter, may be read as good and competent evidence in the cause in which it shall be taken, as if such witness had been present and examined by parol in open court, on the hearing or trial thereof.[14]

SEC. 12. Each and every person authorized, and who may be required to take depositions in any case, shall have power and authority to issue subpœnas, and if necessary, to compel the attendance of all such witnesses as may be named in the commission, or by the parties litigant, where no commission is necessary, in the same manner and under the same penalties as is provided in other cases where witnesses are directed to be subpœnaed.

SEC. 13. Every person attending as a witness before any commissioner, judge, justice or clerk as aforesaid, shall be entitled to a compensation for his time and attendance, and travelling expenses at the same rate, for the time being, as is or shall be allowed to witnesses by law, attending courts of record in this territory, and the party requiring such examination shall pay

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(12) The omission of the magistrate to state the time and place, is immaterial. *Phelps* v. *Young*, Breese, 256.

And where the time and place are stated, only by reference to the caption and notice attached, it is sufficient. *I. C. R. R. Co.* v. *Cowles*, 32 Ill. 116.

(13) The statute requiring the indorsement of the names of the parties litigant is directory; a failure to comply with it will not be ground for suppressing the deposition, unless injury be shown. *Cole* v. *Choteau*, 28 Ill. 439.

The indorsement of the partnership names of the parties is a compliance with the statute. *Forsyth* v. *Baxter*, 2 Scam. 10.

(14) The same party may take more than one deposition from the same witness, but it is with the court to say which shall be read. *Beach* v *Schutz*, 20 Ill. 185.

If a party gives notice of the taking of the depositions of several witnesses, at different places, on the same hour and day, the opposite party may elect upon which examination he will attend, and the other depositions will be suppressed. *Hankinson* v. *Lombard*, 25 Ill. 572.

As to when objections must be made to the form, substance and relevancy of depositions. See *Gaty* v. *Pittman*, 5 Gilm. 186. *Swift* v. *Castle*, 23 Ill. 209. *Corgan* v. *Anderson*, 30 Ill. 97. *Thomas* v. *Danaway*, 30 Ill. 386.

the expenses thereof; but may if successful in the suit, be allowed for the same in the taxation of costs.

SEC. 14. The party, his attorney, or any person who shall in anywise be interested in the event of the suit, shall not be permitted to dictate, write or draw up any deposition or depositions which may at any time be taken under this chapter, and every deposition so dictated, written or drawn up, or that shall be returned to the court unsealed, or the seal of which shall be broken, shall be rejected by the court as informal and insufficient: *Provided*, Such seal shall have been broken previous to its reception by the clerk to whom it shall be directed.

SEC. 15. It shall not be lawful for any party litigant, or the clerk of the court into which any deposition may be returned as aforesaid, to break the seal of the same, either in term-time or in vacation, unless by permission of the court, and if any such person or clerk shall presume to open any such deposition when taken and returned as aforesaid, without such permission as aforesaid, he shall be considered guilty of a contempt of court, and may be punished accordingly: *Provided*, That it shall not be considered an offence for the clerk to break open any such deposition as aforesaid, where it is doubtful from the indorsement made thereon whether the same be a deposition or not, but in such case it shall not be proper for such clerk to permit any person to examine any deposition which may be thus opened by mistake, until permission shall have been first given by the court, as aforesaid.

SEC. 16. All depositions taken in pursuance of this chapter, when returned into court, may be read by either party on the trial of the causes to which they relate.

SEC. 17. In all cases where any person or persons shall desire to perpetuate the remembrance of any fact, matter or thing, which may relate to the boundaries or improvements of land, name or former name of watercourses, the name or former name of any portion or district of country, regarding the ancient customs, laws or usages of the inhabitants of this country, as far as the same may relate to the future settlement of the land-claims, or touching the marriage or pedigree of any person or persons, or in relation to the title of slaves or servants, or any other matter or thing necessary to the security of any estate real or personal or mixed, or any private right whatever, it shall be lawful for such person or persons, upon filing a petition supported by affidavit in the district court of the proper county, setting forth particularly the fact or facts intended to be established, to sue out from such court a *dedimus potestatum* or commission, directed to any two justices of the peace, or to any clerk of the district court of the county wherein such testimony is to be taken, and may thereupon proceed to take such deposition or depositions as shall be prayed for in said petition.

SEC. 18. It shall be the duty of the person suing out such *dedimus* as aforesaid, before proceeding to take such deposition as aforesaid, to give at least four weeks' notice of the time and place where the same is to be taken, together with a copy of the petition annexed thereto, to each and every person who may be known to be interested in the subject-matter of such deposition, or to his, her or their attorney; or in lieu of such written notice, such petitioner may cause such notice, with a copy of the petition, to be addressed to the persons known to be interested, as well as to all others whom it may concern, to be published for four successive weeks in some newspaper printed in this territory, the last publication to be at least four weeks prior to the day of taking such deposition.

SEC. 19. The manner of taking such deposition and the proceedings thereon, shall be the same as specified in section ten of this chapter, and the answers reduced to writing in the English or in the language of the witness: *Provided, however*, That the clerk of the district court, to whom the deposition is transmitted, shall enter the same at large upon the records and return the original to the person for whose benefit it was taken.

SEC. 20. All depositions taken in manner and form as provided in the foregoing section, or a duly certified copy of the record of such deposition, may in case of the death of any such deponent, or in case of inability to give testimony in consequence of his, her or their insanity or imbecility of mind or body, or where such witness shall be rendered incompetent by judgment of law, or in the event of his, her or their removal, so that their testimony cannot be had in the ordinary way on trial, be used as evidence in any case to which the same may relate: *Provided*, That nothing herein contained shall be so construed as to prevent any legal exception being taken and allowed to the reading of any such deposition, in any trial at law or in equity, in which the same may be introduced as evidence.

SEC. 21. Whenever the deposition of any witness or witnesses is desired to be read in evidence in any civil cause depending in any court of this territory, whether in law or equity, in accordance with the provisions of this chapter, when neither the adverse party in such cause, nor his attorney, resides within the limits of this territory, after affidavit of such non-residence being filed with the clerk of the court in which the cause is pending, the notices provided for in this chapter may be given by posting said notices at the door of the court-house of the county where the suit is pending, and filing interrogatories, when required by this chapter, in the office of the clerk of said court, at least four weeks prior to suing out a commission or taking depositions as the case may be.

Prior Statutes Repealed. An act concerning Evidence and Depositions. Approved October 31, 1861. Laws 1861, p. 214.

CHAPTER XXXI.

FEES AND SALARIES.

SECTION
1-2. Clerk's fees in district court.
3. Clerk's fees in supreme court.
4. Sheriff's fees.
5. Fees of notary public.
6. Fees of master in chancery.
7. *Per diem* of members of legislative assembly.
8. Witnesses' fees.
9. Jurors' fees,
10. County treasurer's fees.
11. County clerk's fees.
12. District attorney's fees.
13. Fees of justices of the peace and constables.
14. Fees of constables.
15. Fees of probate judges.
16. County commissioners' fees.
17. Secretary's fees.
18. Coroner's fees.
19. Judges and clerks of election.
20. Printers.

SECTION
21. Salary of judges of supreme court.
22. Fees of county treasurer for collecting tax to pay interest on county bonds issued to railroad companies.
23. Fees of clerk of supreme court.
24. Prior acts repealed.
25. This act in force from its passage.
26. Witness fees remaining in hands of clerks, etc., unclaimed for three months to be paid into county treasury.
27. Clerk to present statement of such fees to treasurer.
28. Witness may reclaim fees within one year; treasurer to pay same over on certificate of clerk, etc.
29. Penalty for failure to comply with this act.
30. This act in force from its passage.
31. Salary of territorial auditor.
32. Prior acts repealed.

SECTION 1. The following shall be established, and shall hereafter be allowed as the fees for the officers and persons herein specified:

CLERK'S FEES IN THE DISTRICT COURT.

SEC. 2. For filing each paper required to be filed, fifteen cents; for every summons or other process, not herein expressly named, and sealing the same, one dollar and twenty-five cents: for each subpœna, (provided that only one subpœna shall be issued for every four witnesses, unless expressly requested,) seventy-five cents; for taking bonds for costs, fifty cents; for filing papers on appeal from justice of the peace, taking appeal bond, and issuing *supersedeas* thereon, two dollars; for each entering of a suit on docket for trial, twenty-five cents; for entering each order or rule of court for continuance, or any order, rule or proceeding of court actually entered in the progress of a suit, and counting the whole entry for one, seventy-five cents; for each discontinuance, *retraxit*, or nonsuit, fifty cents; for each *dedimus* to take depositions, two dollars; for calling and swearing each jury, fifty cents; for swearing each witness in court, fifteen cents; for swearing any person to an affidavit, and filing the same, thirty-five cents; for entering each final judgment in a case, seventy-five cents; for entering each decree in chancery, twenty-five cents per folio; for issuing each writ of *habeas corpus, certiorari* or *procedendo*, one dollar and fifty cents; for issuing each writ of injunction, *quo warranto* or *mandamus*, two dollars; for issuing each writ of attachment or replevin, two dollars; for assessing the damages on any bond, note or other instrument for the payment of money, by order of the court, and making a report thereof, and filing said report, one dollar; for entering special bail of record, in each case fifty cents; for swearing an officer to take charge of a jury, twenty cents; for issuing an execution, one dollar and fifty cents; for docketing the same, twenty-five cents; for entering the sheriff's return on each execution, per folio, twenty-five cents; for entering satisfaction of judgment, twenty-five cents; for entering the report of commissioners, or referees or the award of arbitrators, and all other special entries, per folio, twenty cents; for each certificate and seal, other than the process of the court, one dollar; for taking and approving appeal, or any other bond, each, one dollar and fifty cents; for entering appearance of attorney, twenty-five cents; for each attachment for a witness or other person, one dollar; for each *venire facias*, one dollar and fifty cents; for making bill of costs for each execution, entering the same of record in the fee-book, being one charge, one dollar; for making a complete record, for each folio, twenty cents; for making copy of any paper in a case, per folio, twenty cents; for certifying and sealing the same, when required, one dollar; for taking depositions, per folio, and certifying the same, twenty cents; for taking acknowledgment of deeds, power of attorney, or other instrument in writing, and certifying and sealing the same, one dollar; for filing and recording declaration of intent to become a citizen of the United States, three dollars; for final naturalization, including oath, recording copy, certificate and seal, five dollars; for taking each recognizance in courts, and entering the same of record, one dollar; for arraigning prisoners at the bar, fifty cents; for entering judgment of conviction, one dollar; for copy of indictment, when required, per folio, twenty cents; for entering discharge of a recognizance, twenty-five cents; for copy of lists of grand or petit jurors, when required in a criminal case, thirty cents; for entering attorneys on roll, administering oath, certificate and seal, five dollars.

CLERK'S FEES IN THE SUPREME COURT.[1]

SEC. 3. For each docketing of suit, one dollar and twenty-five cents; for each motion in a case, twenty-five cents; for each order made, interlocutory motions, continuance or otherwise, twenty-five cents; for indexing suits, fifty cents; for each writ or summons, two dollars; for entering appearance of attorney, twenty-five cents each; for filing each paper required to be filed, twenty cents; for entering final judgment, seventy-five cents; for recording all papers required to be recorded, twenty cents per hundred words; for making complete records, twenty cents for each one hundred words; for entering return of any writ or process, except executions, thirty cents; for taking acknowledgment of deeds, fifty cents; for certificate, making out and recording the first papers in cases of persons declaring their intention to become citizens of the United States, two dollars; for naturalization, final oath and record, five dollars; for administering oaths and adding jurats to affidavits, twenty-five cents; taking depositions, fifteen cents per folio; for certificates to attorneys to practise law, five dollars; for making and recording certificate for United States commissioners, three dollars; administering oaths, ten cents; for fee-bill, one dollar; for docketing fee-bill, twenty-five cents; entering return of execution, twenty-five cents.

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[1] But see the act of January 10. 1868, at the end of this chapter.

SHERIFF'S FEES.

SEC. 4. For serving and returning summons, on each party, one dollar and fifty cents; for serving subpœna on each witness, seventy-five cents; for summoning each juror, seventy-five cents; for advertising property for sale, besides the actual expenses, one dollar; for returning each writ or other process, seventy-five cents; mileage for each mile actually travelled in all cases, twenty cents; for levying executions, two dollars; for serving and returning *scire facias*, one dollar and fifty cents; for committing or discharging any prisoner to or from jail, one dollar; for dieting prisoners per day, such reasonable compensation as shall be allowed by the board of county commissioners; for attending before any judge with prisoners, with writ of *habeas corpus*, one dollar and fifty cents; for each mile travelled in taking prisoner before judge on writ of *habeas corpus*, twenty cents; for serving writ of possession, with aid of *posse comitatus*, five dollars; for serving the same without such aid, two dollars and fifty cents; for attending district or probate court when in session, per day, four dollars, to be paid out of county treasury; for executing and acknowledging deed of sale of real estate, three dollars and fifty cents; for making certificate of sale, previous to execution of deed, two dollars; for taking bond in any case, one dollar and fifty cents; for executing *capias* or warrant in criminal cases on each person named therein, one dollar and fifty cents; for making and recording certificate of levy in attachment and other cases, two dollars; for transporting and feeding prisoners, per mile, thirty cents, besides actual expenses. Commissions on money collected without sale: On all sums under five hundred dollars, three per cent.; on all sums over five hundred dollars and under one thousand, two per cent.; and on all sums over one thousand dollars, one per cent. Commissions on money collected by sale: On all sums under five hundred dollars, six per cent.; on all sums over five hundred dollars and under one thousand, five per cent.; on all sums over one thousand dollars, two per cent.; for executing sentence of death, fifty dollars, together with actual expenses incurred in carrying out such sentence of death, to be paid out of the county treasury; for pursuing and capturing each person charged with the commission of any crime denominated a felony, beyond the limits of his county, in addition to the mileage now allowed by law, the sum of three dollars per day, to be paid out of the county treasury. The constables shall be entitled to the same fees for pursuing and capturing criminals as is now provided for sheriffs in this act, to be paid out of the county treasury.

FEES OF NOTARIES PUBLIC.

SEC. 5. For noting a bond, bill of exchange, or promissory note for protest, one dollar; for each protest and record of the same, one dollar and fifty cents; for each notice of protest, one dollar; for each certificate and seal, seventy-five cents; for each acknowledgment of a deed or other instrument in writing, one dollar; for taking depositions, per folio, twenty cents; for swearing any person to an affidavit, with certificate and seal, one dollar; for all other services, the same fees as justices of the peace for like services.

FEES OF MASTERS IN CHANCERY.

SEC. 6. For making sale of real estate, in pursuance of the order or a decree of the court, making certificate of such sale and deed thereon, the same fees as allowed to sheriffs for making sale of real estate, upon execution at law; for taking testimony in any case, upon an order of reference, the same fees as allowed justices of the peace for taking depositions; for report on any such case, five dollars; for hearing each application for a writ of injunction, *ne exeat*, or other writ, five dollars; for attendance to take depositions at request of any party, whether depositions are taken or not, *per diem*, two dollars and fifty cents.

PER DIEM OF MEMBERS OF LEGISLATIVE ASSEMBLY.

SEC. 7. Members of the council and house of representatives of Colorado territory shall receive in addition to the *per diem* paid by the general government, the sum of five dollars per day for their services in attendance on the sessions of the said council and house of representatives. The auditor of the territory is hereby directed and authorized to draw a warrant on the territorial treasurer in favor of each member of the said council and house of representatives, in payment of the additional amount as above specified, on the presentation to him by such member of a certificate signed by the clerk or secretary of the house of which he was a member, certifying that the holder thereof was a member of such body, and was in actual attendance on the duties of the same; and upon the presentation of such warrant to the territorial treasurer he shall pay the same out of any funds in the treasury not otherwise appropriated: *Provided*, That no member shall receive pay for more days than he was in actual attendance.

WITNESSES' FEES.

SEC. 8. Witnesses attending in any court of record, or before a commissioner or referee, per day, two dollars and fifty cents; in justices' courts, two dollars, and twenty cents per mile for every mile actually travelled, in going from the residence of the witness to the place of holding court.

JURORS' FEES.

SEC. 9. Jurors' fees in district courts, per day, two dollars and fifty cents; before justices of the peace, per day, two dollars; attending inquest over dead body, to be paid out of the county treasury, two dollars and fifty cents; mileage for each mile travelled, twenty cents.

COUNTY TREASURER'S FEES.[2]

SEC. 10. The county treasurer shall receive the following compensation: For collecting taxes on the first three thousand dollars, ten per cent.; on amount between three and four thousand dollars, six per cent.; on amount between four and five thousand dollars, four per cent.; on all sums over five thousand and under ten thousand dollars, three per cent.; on all sums over ten thousand dollars, two per cent.; for receiving and paying out all moneys, otherwise than taxes and school-fund, three per cent.; for every mile travelled in going to and returning, to make settlement with territorial treasurer and auditor, and to make deposits of territorial revenue, twenty cents per mile.

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(2) See the act of January 9, 1868, at the end of this chapter.

If in the opinion of the county commissioners of any county the above specified percentage is deemed by them inadequate to collect the taxes of their county, they are hereby authorized and empowered to pay a greater percentage for collecting the same than that specified above: *Provided*, That such percentage does not exceed fifteen per cent. on the amount so collected.

COUNTY CLERK'S FEES.

SEC. 11. The county clerks shall be and the same are hereby authorized to receive the same fees as district clerks for like services. For entering each order of court, thirty-five cents; for administering each oath, twenty cents; for each certificate and seal, seventy-five cents; each bond and license, three dollars; taking proof in estray cases, and granting certificate of same, two dollars; for advertisements, including copy for newspaper publication, one dollar and fifty cents; for trying and sealing weights and measures by county standard, fifty cents; for every certificate of magistracy, under seal, seventy-five cents; for every instrument authorized to be recorded, first one hundred words, forty cents; for each additional folio, twenty-five cents; for each entry in index, ten cents; for certificate of record, fifty cents; taking acknowledgments, seventy-five cents; copies of record, per one hundred words, twenty cents; for making search of records, when no certificate is given, twenty-five cents; for recording town plats, for first one hundred lots or less, five dollars; for each additional lot, two cents; for making abstracts, for first five conveyances or entries, or less, each, fifty cents; for each additional conveyance or entry, twenty-five cents.

DISTRICT ATTORNEY'S FEES.

SEC. 12. The fees of district attorneys shall hereafter be as follows: In all civil cases, a docket fee of ten dollars; for all collections for territory, when the amount is under five hundred dollars, ten per cent.; fee for every criminal trial or examination before a justice of the peace, five dollars; in cases where more than one day is consumed in such trial or examination, by change of venue or otherwise, per day, five dollars; for every conviction for misdemeanor, in district court, fifteen dollars; for every conviction for felony, in district court, twenty-five dollars; for every conviction in capital cases, fifty dollars; *per diem* for each day necessarily employed in attending cause on change of venue, in district court, five dollars; for drawing each indictment, ten dollars. No fees shall be allowed for drawing any indictment which may be quashed.

FEES OF JUSTICES OF THE PEACE.

SEC. 13. The fees of justices of the peace in the territory of Colorado shall be as follows, to wit: For docketing each case, twenty-five cents; for issuing summons for one person, seventy-five cents; for each additional person named therein, fifty cents; for each order of arrest, seventy-five cents; for each attachment against property, one dollar and twenty-five cents; for attachment against persons, for contempt, seventy-five cents; for each *mittimus*, one dollar; for subpœna for one person, fifty cents; for each additional person, twenty-five cents; for each *venire*, one dollar; for each execution or order of sale, one dollar; for each writ of restitution, one dollar; for warrant for one person, criminal, one dollar; for each additional person, fifty cents; for order on jailer for person or persons, seventy-five cents; for writs of forcible entry or detainer, one dollar and fifty cents; for every other writ required by law, fifty cents; for hearing each preliminary or dilatory motion, fifty cents; for judgments on merits, or for costs, seventy-five cents; for dismission or discontinuance, fifty cents; for taking verdict, twenty-five cents; for making up docket, each one hundred words, twenty-five cents; for each certificate, fifty cents; for transcript of docket or other writing, each one hundred words, twenty-five cents; for swearing jury, twenty-five cents; for administering each oath, twenty-five cents; for filing each paper, fifteen cents; for taking each bond or undertaking, fifty cents; for appointing special constable, twenty-five cents; for taking each acknowledgment, fifty cents; for trying each cause of forcible entry and detainer, two dollars; for trying each criminal cause or misdemeanor, one dollar; for trying each civil cause, one dollar; for taking depositions, each one hundred words, twenty-five cents; for writing affidavit or other writing not provided for, each one hundred words, twenty-five cents; for performing duties as coroner, same fees as coroner; for marrying each couple and making returns, five dollars.

FEES OF CONSTABLES.

SEC. 14. The fees of constables in Colorado territory shall be as follows, to wit: For serving each warrant or other writ not herein provided for, on each person therein named, one dollar; for serving each summons, on each person, seventy-five cents; for serving each subpœna, on each person, fifty cents; for serving attachment, one dollar; for serving writs of replevin, and appointing appraisers, two dollars; for returning each process, fifty cents; for serving and levying executions, one dollar; for conveying prisoners to and from jail, one dollar; for serving writ, with aid of *posse comitatus*, five dollars; for taking replevin or other bond, one dollar; for transporting prisoners, per mile, twenty-five cents; for each mile actually travelled in all cases, twenty cents; for attending at each jury trial occupying one half day, two dollars; for each additional six hours, one dollar; for attending on each trial or examination, without a jury, one dollar and fifty cents; for commissions on money collected, without sale, five per cent. on all sums of one hundred dollars or under; on all sums over one hundred dollars, three per cent.; on all sums of money collected, by sale, of sums of one hundred dollars and under, eight per cent.; and on all sums over one hundred dollars, five per cent.

FEES OF PROBATE JUDGES.

SEC. 15. The several probate judges in this territory shall receive the following fees for services performed by them: For appointing an executor, administrator, guardian or trustee, and certifying the same if contested, ten dollars; if not contested, five dollars; for granting letters testamentary or of administration, and affixing seal thereto, three dollars; taking bond of executor, administrator or guardian, and approving same, two dollars; administering oath to each executor, administrator or guardian, fifty cents; taking proof of will or codicil, two dollars and fifty cents; for recording any will, codicil or other paper, for each one hundred words, twenty-five cents; for examining each inventory, bill of sale or account current, filed by an executor or administrator, one dollar; entering the settlement of executors or administrators, twenty-five cents per folio of one hundred words; for all copies of orders, papers and proceedings, twenty-five cents per folio of one hundred words; for each decree limiting the time for exhibiting the claims of creditors, one dollar; for each order of distribution, three dollars; for exemplified copies of records, per folio of one hundred words, twenty-five cents; making order for publication, fifty cents; allowing appeal to district court, one dollar and fifty cents; issuing each writ, summons or citation, one dollar and fifty cents; administering oath and certificate thereof, forty cents; administering oath to witness, twenty cents; issuing subpœna, seventy-five cents; entering each order, decree or judgment not herein enumerated, seventy-five cents; filing any paper pertaining to any estate, fifteen cents; granting letters of guardianship or trusteeship, two dollars; taking and approving any bond, not hereinbefore specified, one dollar; revoking letters testamentary, of administration, guardianship or trusteeship, two dollars; administering oath to jury, thirty cents; taking acknowledgments of interests, seventy-five cents; issuing *venire* for jury, seventy-five cents; entering verdict, fifty cents; allowing or disallowing demands against an estate, forty cents;

entering order of continuance, fifty cents; decree for settling estate, five dollars; for each hearing on petition for partition of real estates, or sale of real estate, three dollars; for making and entering each order for the sale of personal property, one dollar; for making and entering each order or decree for the sale or partition of real estate, two dollars and fifty cents: for solemnizing marriages, five dollars. For all cases in which a probate judge shall perform the duties of a justice of the peace, he shall receive the same fees as are provided by law to be paid to justices of the peace for like services. In all cases instituted or brought in the probate court of any county, the judge of such court shall be entitled to a docket fee of five dollars; and in all cases in which the final hearing or trial of any cause shall consume more than one day, the judge of such court shall be entitled to an additional sum of five dollars for each day after the first day occupied in such hearing or trial, to be taxed as costs against the unsuccessful party.

COUNTY COMMISSIONERS' FEES.

SEC. 16. The county commissioners of the several counties of this territory shall be allowed five dollars per day for each day spent in the performance of their respective duties, and fifteen cents per mile for the distance actually travelled in going to and returning from the place of meeting.

SECRETARY'S FEES.

SEC. 17. The secretary of the territory shall have the right to charge fees upon papers issued by him, as follows: For each military commission, with seal, two dollars and fifty cents; for each notary's commission, with seal, two dollars and fifty cents; for each foreign commission, with seal, five dollars; and all other commissions and appointments to which the territorial seal is attached, two dollars and fifty cents. In all cases the sums shall be collected from the individual receiving the commissions, and not from the territorial treasury.

FEES OF CORONERS.

SEC. 18. Coroners shall be allowed eight dollars for each inquest, and fifteen cents per mile for each mile necessarily travelled in going to and returning from the place of inquest, to be paid by the county. For all services performed in the place of the sheriff, the same fees as are allowed to the sheriff for his services.

FEES OF JUDGES AND CLERKS OF ELECTION.

SEC. 19. Each judge and clerk of elections shall be entitled to two dollars and fifty cents per day for each day's service as such judge or clerk, to be paid out of the county treasury. Each messenger carrying election returns to the clerk of his county, shall be entitled to the same *per diem* as the judges and clerks, and fifteen cents per mile for the distance necessarily travelled in going to and returning from the office of said county clerk.

PRINTERS' FEES.

SEC. 20. Publishers of newspapers in this territory shall be entitled to the following fees for the publication of all legal advertisements: For the first insertion of each folio of one hundred words, one dollar; for each subsequent insertion, fifty cents.

SALARY OF JUSTICES OF THE SUPREME COURT.

SEC. 21. There shall be paid to the justices of the supreme court of this territory the sum of two thousand dollars per annum, as additional compensation to the salary now provided by law, and the same shall be paid quarter-yearly by the territorial treasurer, out of any moneys in the treasury not otherwise appropriated.

An act limiting the amount of Compensation to County Treasurers for the collection of County Taxes to pay Interest on County Bonds.

[*Approved January* 9, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 22. (I.) The treasurers of the several counties wherein county bonds have been or may hereafter be issued in aid of the construction of railroads, shall receive as compensation for the collection of taxes annually assessed and levied for the payment of interest on said bonds, the sum of one dollar for each one hundred dollars collected and paid out by said treasurer. But this act shall not be construed to allow to said treasurer any other compensation for the collection and disbursement of so much of the county taxes as shall equal the amount to be paid for interest aforesaid.

An act prescribing the Fees of the Clerk of the Supreme Court.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 23. (I.) That hereafter the clerk of the supreme court shall receive the following fees for services in the supreme court, and none other, viz.: For docketing each suit, five dollars; for each motion made in any cause, fifty cents; for each order, interlocutory motion, continuance or otherwise, fifty cents; for indexing suit, fifty cents; for each writ of summons, writ of error, *certiorari* or other writ or process issued from said court, two dollars; for entering the appearance of each attorney, twenty-five cents; for filing each paper, except in appealed cases, twenty-five cents; for filing papers in appealed cases from district or probate courts, two dollars; for entering final judgment, one dollar; for recording all papers required to be recorded, twenty-five cents per hundred words; for making complete record of any cause, twenty cents per folio of one hundred words; for entering return of any process, fifty cents; for taking acknowledgments of deeds, one dollar; for copy of any paper or record of any cause, twenty cents per hundred words; for certificate and recording first papers in cases of naturalization, five dollars; for final papers to persons declaring their intention to become citizens of the United States, five dollars; for administering oath and adding its jurat to affidavits, fifty cents; for taking depositions, per folio, twenty cents; for caption and certificate to depositions, two dollars and fifty cents; for certificates and filing oath and all papers and entering name of attorney to practise law, ten dollars; for making and recording commissions to United States commissioners, three dollars; for administering oath, twenty-five cents; for fee-bill, and docketing same, two dollars; for docketing fee-bill, fifty cents; for issuing *procedendo*, or order remanding any cause to the court below, two dollars; for all other services not herein specified, the same fee as is now allowed to clerks of the district courts. The clerk shall have the right to collect all fees in advance.

SEC. 24. (II.) All acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 25. (III.) This act shall take effect and be in force from and after its passage.

An act disposing of Unclaimed Witness Fees.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 26. (I.) That hereafter all moneys collected by any clerk of the district court of any of the judicial districts and probate judges of this territory, as witness fees, that shall have remained in the possession of said clerk for a period of three months, shall be paid by the clerk into the treasury of the county for which said court is held.

SEC. 27. (II.) That it shall be the duty of the clerk of every such court in this territory to present, between the first and tenth days of the months of April and October, of each and every year, a detailed certified statement of all such fees collected by him and uncalled for by the owner, to the county treasurer of the county in which he resides, and to pay the amount over to the treasurer and take his receipt for the same.

SEC. 28. (III.) That if any person entitled to witness fees in any suit in the district or probate courts shall, within one year from the time his right to such fees accrued, make application to the clerk of the district court or the probate judge, said clerk or judge shall give him a certificate setting forth the amount due to said witness, which amount shall be paid by the county treasurer upon the presentation of said certificate.

SEC. 29. (IV.) Any such clerk failing to comply with the provisions of this act, shall be liable to the county in which he resides, in the penal sum of five hundred dollars for each offence, to be collected as other like fines.

SEC. 30. (V.) This act shall be in force from and after its passage.

An act to provide for the Salary of the Territorial Auditor, and the Contingent Expenses of his Office.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 31. (I.) That the territorial auditor shall be allowed an annual salary of one thousand dollars, and the sum of three hundred dollars per annum to pay for books, stationery, furniture, office-rent, fuel, lights and other necessary contingent expenses.

SEC. 32. (II.) All acts and parts of acts conflicting with this act are hereby repealed.

Prior Statutes Repealed. An act regulating the Fees of Officers, Jurors and Witnesses. Approved November 8, 1861. Laws 1861, p. 387.

An act to amend an act entitled An act regulating the Fees of Officers, Jurors and Witnesses. Approved August 13, 1862. Laws 1862, p. 68.

An act to amend An act regulating the Fees of Officers, Jurors and Witnesses. Approved March 11, 1864. Laws 1864, p. 81.

An act fixing the Compensation of Members of the Legislative Assembly of the Territory of Colorado, and amendatory of the several acts heretofore passed regulating the Fees of Officers, Jurors and Witnesses. Approved February 10, 1865. Laws 1865, p. 62.

An act to amend section six of an act entitled An act fixing the Compensation of Members of the Legislative Assembly and other Officers of Colorado Territory. Approved February 2, 1866. Laws 1866, p. 55.

An act to regulate the Fees of Officers. Approved January 11, 1867. Laws 1867, p. 64.

CHAPTER XXXII.

FENCES AND INCLOSURES.

SECTION
1. Occupants of adjoining lands each to build one half dividing fence.
2. If one occupant has already erected the dividing fence, the other party upon occupying lands, to pay one half its value.

SECTION 1. Where the lands of two persons join, and both parties shall occupy the land, it shall be the duty of each party to build one half of the line fence.

SEC. 2. Where one party shall have already erected a fence upon any line between himself and any other party, and the other party wishes to occupy the land adjoining, it shall be his duty to either build one half of said fence, or pay the party owning said fence one half of its cash value.

Prior Statutes Repealed. An act concerning a Line Fence. Approved November 7, 1861. Laws 1861, p. 143.

Local Statutes. An act relating to Fencing. [As amended by acts amendatory thereto.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. No farmer, gardener or ranchman cultivating land, shall be required to fence or inclose his land under cultivation as against any stock running at large within any county which shall adopt this law, as hereinafter provided.

SEC. 2. All owners of stock running at large in such counties, shall be required to herd or confine within inclosures, all such stock, during the growing of crops, and from the time of planting or sowing crops until the first day of December.

SEC. 3. The owner of any stock residing in any county wherein this law shall be adopted, as hereinafter provided, shall be liable from and after the adoption of this law for all damages which shall accrue to any crops planted, growing or standing in the field, by the trespassing of such stock, such damage to be recovered by suit in any court of competent jurisdiction.

SEC. 4. At the first general election held hereafter, as provided by law, or at any subsequent county election, every qualified elector at such election in each county in the territory, may vote by ballot "for fence law" or "against fence law."

SEC. 5. If it shall appear, upon the canvass of the votes at such election by the county board of canvassers of any county wherein this law is voted upon, that a majority of all the votes cast in any county upon the question of the adoption of this law have been cast "for fence law," then this law shall be considered and declared adopted, and shall take effect and be in force in such county from and after said election; but if it shall appear from such canvass that a majority of all the votes cast in any county, upon the adoption of this law, have been cast "against fence law," then it shall be deemed and considered that the people of that county do not desire such a law, and this law shall thereupon be considered and held not to apply to such county.

SEC. 6. It shall be the duty of the county clerk of any county wherein the question of the adoption of this law shall be voted upon, within five days after the canvass of the votes of such county, to make a statement of the result of said election, as to whether this law has been adopted or rejected, with an abstract of the vote upon said question, which statement shall be certified by the board of county canvassers and placed upon record in the office of the clerk of the county, and said clerk shall thereupon, within ten days after said election, cause notices to be posted, in at least five public places in said county, stating whether this law has been adopted or rejected, which notice shall be in substance as follows, viz.: At an election held in the county of ——, on the —— day of ——, 186—, the law entitled An act relating to fencing, approved ——, 186—, was adopted (or rejected, as the case may be,) by a vote of —— votes in favor of said law, and —— votes against said law. ——, clerk of —— county.

Approved August 8, 1862. Laws 1862, p. 68. Laws 1864, p. 90. Laws 1866, p. 56.

An act concerning Fences. [As amended by the acts amendatory thereto.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. The following shall be considered lawful fences in this territory: *First,* Post and plank fences four feet six inches high, made of sound posts, five inches in diameter, set substantially in the ground, not more than eight feet apart, with three planks, not less than one inch thick and six inches wide, securely fastened by nails or otherwise, said planks not more than twelve inches apart. *Second,* Post and plank fences, with posts not more than eight feet apart, and planks not less than one and one fourth inches in thickness, made in all other respects the same as the one first described in this section. *Third,* Worm fences, made in the usual way, of sound, substantial rails or poles, five feet high, including riders, with stakes firmly set in the ground, and spaces no greater than in post and plank fences.

SEC. 2. All other fences, which by reliable evidence shall be declared as strong and as well calculated to protect inclosures as either of those described in the preceding section of this act, shall be lawful fences.

SEC. 3. Any person making and maintaining in good repair around his inclosure, any fence such as is described in sections one and two of this act, may recover in a suit for trespass, before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damage sustained on account of such trespass, together with costs of suit, and the animal or animals so trespassing, may be taken and held as security for the payment of such damages and costs: *Provided*, That such person shall have such fence examined and the damages assessed by three reliable, disinterested persons, and practical farmers, within five days next after the trespass has been committed: *And provided further*, That if before trial, the owner of such trespassing animal or animals shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages, which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same, and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded.

SEC. 4. When any fence has been or shall hereafter be erected by any person, on the boundary line of his land, and the person owning the land adjoining thereto, shall make or cause to be made an inclosure, so that such fence may also answer the purpose of inclosing his ground, he shall pay to the owner of such fence already erected, one half the value of so much thereof as serves for a partition fence between them.

SEC. 5. When two or more persons own land adjoining, which is inclosed by one fence, and it becomes necessary for the protection of the interest of one party said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one half of such partition fence, said fence to be erected on or as near as practicable the line of said land.

SEC. 6. If after notice has been given by either party, and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected the one half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect, by law, one half of the cost thereof, from the other party.

SEC. 7. The respective owners of adjoining inclosures shall keep up and maintain in good repair, all partition fences between such inclosures, in equal shares, so long as they shall continue to occupy or improve the same.

SEC. 8. When any person shall unwittingly or by mistake erect any fence on the land of another, and when by a line legally determined, that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: *Provided*, That when the fence to be removed forms any part of a fence inclosing a field of the other party, having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run.

SEC. 9. When any party shall wish to lay open his inclosure, he shall notify any person owning an adjoining inclosure, and if such person shall not pay to the party giving notice, one half the value of any partition fence between such inclosures, within three months after receiving such notice, the party giving notice may proceed to remove one half of such fence: *Provided*, As provided in section eight of this act.

SEC. 10. In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages, in section four of this act.

SEC. 11. Upon the trial of any cause occurring under the provisions of this act, the defendant may impeach any such assessment, and in that case, the court or the jury shall determine the damages.

SEC. 12. Nothing in this act shall be so construed as to apply to the counties of Conejos, Costilla, Huerfano, Douglas, Weld, Arapahoe, El Paso, Pueblo, Park, Summit, Lake, Gilpin and Clear Creek, until a majority of the electors of any such county, voting at any general election held hereafter under the laws of this territory, shall vote and adopt this act, when it shall take effect and be in full force in such county.

SEC. 13. All acts or parts of acts conflicting with the provisions of this act, are hereby repealed.

SEC. 14. The owner of any animal that is unruly and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals that may be in company with such animal.

SEC. 15. This act shall take effect and be in force on and after its passage.

Approved March 11, 1864. Laws 1864, p. 87. Laws 1865, p. 61. Laws 1866, p. 55.

CHAPTER XXXIII.

FIRE-COMPANIES.

SECTION
1. Members of fire-companies exempt from duty as jurors.

SECTION
2. Membership in such fire-company how proved.

SECTION 1. All persons who are members of any regularly organized fire-company, or of a hook-and-ladder company within this territory, and who are subject to duty as members of any such company, are hereby exempted from serving on juries in any court of this territory.

SEC. 2. The certificate of the foreman and secretary of any such company, that any person is a member thereof and subject to active duty as such member, shall be *prima facie* evidence of such membership.

Prior Statutes Repealed. An act to exempt firemen from serving on juries. Approved January 11, 1867. Laws 1867, p. 74.

CHAPTER XXXIV.

FLOUR INSPECTOR.

SECTION
1. Appointment; term of office.
2. Oath; bond.
3. Duties.
4. Penalty for falsely marking any package inspected; board of commissioners may remove inspector for incompetency.
5. Penalty for selling flour without inspection.
6. Penalty for changing flour inspected.
7. Fees of inspectors.

SECTION 1. It shall be the duty of the probate judge in each and every county in this territory, to appoint one or more suitable persons, who shall act as flour inspectors within the county where they reside, and shall hold their term of office for one year, or until their successors are appointed and qualified; unless sooner removed from office as provided in this chapter. But not more than one such person shall be appointed in any city, town or township.

SEC. 2. It shall be the duty of the person so appointed, before entering upon the duties of his office, to take the oath of office prescribed by law, and he shall also give bonds to the territory of Colorado in the penal sum of two thousand dollars, with two or more good sureties, to be approved by the county commissioners, conditioned that he will faithfully perform the duties of his office.

SEC. 3. It shall be the duty of the flour inspector so appointed, on application of any person owning flour or having the same in charge, to proceed to the place where the flour may be, and at once to inspect the same, and after inspection mark upon the sack, package, bag or barrel containing the same, its character, whether fine, superfine, extra superfine, scratched or condemned, and one inspection of any flour will pass the same through every county in the territory.

SEC. 4. If any flour inspector shall inspect and mark any sack, bag, package or barrel of flour whereby said mark shall indicate a different grade of flour from that contained therein, he shall be deemed guilty of a misdemeanor, and for each and every sack, bag, package or barrel so marked, he shall forfeit and pay the sum of twenty-five dollars, which shall go to the school-fund of the county, to be recovered by action of debt instituted in the name of the county in which the offence was committed, in any court of competent jurisdiction, and in case of proof of the incompetency of any person appointed to said office of flour inspector before the board of county commissioners, if the said board is satisfied of such incompetency, it shall be their duty to remove such incompetent person from the said office of flour inspector.

SEC. 5. If any person shall sell any sack, bag, barrel or package of flour weighing forty-eight pounds or more without the inspector's mark thereon, he shall be subject to the same penalty as that prescribed in the last preceding section, to be recovered in the same manner, and the money so recovered to be paid into the school-fund as provided in section four.

SEC. 6. If any person in possession or having control of any sack, bag, package or barrel of flour with the inspector's mark thereon, shall wrongfully, wilfully and corruptly change or shift said flour from the sack, bag, package or barrel and put therein other flour different from that indicated by the inspector's mark thereon, and sell the same, he shall be deemed guilty of a misdemeanor, and for each and every sack, bag, package or barrel of flour so shifted or changed as aforesaid, he shall forfeit and pay the sum of twenty-five dollars.

SEC. 7. The inspector shall receive the sum of ten cents for each and every sack, bag, package or barrel of flour by him inspected and marked, for the first one hundred in any one lot; for over one hundred and under three hundred in any one lot, the sum of seven cents for each sack, bag, package or barrel of flour so inspected and marked; and for all over three hundred in any one lot, the sum of five cents for each sack, bag, package or barrel of flour so inspected or marked, to be paid by the person or persons making the application.

Prior Statutes Repealed. An act to create the office of Flour Inspector. Approved February 8, 1865. Laws 1865, p. 69.

CHAPTER XXXV.

FORCIBLE ENTRY AND DETAINER.

SECTION
1. Unlawful or forcible entry forbidden.
2. Forcible entry and detainer defined.
3. Unlawful detainer defined.
4. Wrongful detainer where defendant continues in possession in bad faith.
5. Holding over after expiration of lease, an unlawful detainer.
6. Demand for rent may be made at any time; default to work a forfeiture of lease.
7. Landlord in lease from month to month may change terms of tenancy by fifteen days' notice.
8. Title in United States, not to defeat recovery; extent of claim.
9. What courts have jurisdiction; if on trial before justice title or boundaries come in question, justice shall certify papers to probate court, or in certain cases into the district court.

SECTION
10. Action how commenced; complaint, summons; how served.
11. Plea to be under oath.
12. Proceeding on trial governed by chapter concerning justices and constables; probate court always open.
13. Appeals; condition of bond; double rent recoverable after commencement of action.
14. Trial on appeal *de novo;* evidence of title and boundaries receivable, but judgment not to affect title.
15. Plaintiff recovering to have a writ of restitution; costs.
16. Defendant recovers costs if plaintiff nonsuit.
17. Appeals and writs of error to supreme court; condition of bond.
18. What notice necessary to terminate tenancy in certain cases.

SECTION 1. No person shall enter upon, or into any lands, tenements or other possessions, except in cases where entry is given by law, and then only in a peaceable manner.

SEC. 2. If any person or persons shall enter upon or into any lands, tenements or mining claim or other possessions with force, or strong hand, or multitude of people, whether any person be actually upon or in the same at the time of such entry or not, or if any person, by threats of violence or injury to the party in possession, or by such words or actions as have a natural tendency to excite fear or apprehension of danger, shall gain possession of any lands, tenements, mining claims or other possessions, and detain and hold the same; or if any person shall enter peaceably upon any lands, tenements, mining claims or other possessions, whether any person be actually in or upon the same at the time of such entry or not, and shall by force turn the party in possession out, or by threats, or by words or actions, which have a natural tendency to excite fear or apprehension of danger, frighten the party out of possession, and detain and hold the same; or if any person shall enter upon or into any lands, tenements, mining claims or other possessions, peaceably or otherwise, and by force or by threats of violence, or words, or actions, which have a natural tendency to excite fear or apprehension of danger, shall intimidate the party entitled to possession from returning upon or possessing the same, and shall hold and detain the same; in every such case the person or persons so offending shall be deemed guilty of a forcible entry and detainer, within the meaning of this chapter.

SEC. 3. If any person or persons wrongfully, and without force, shall detain or continue in possession of any lands, tenements, mining claims or other possessions, and after demand made in writing for the delivery of the possession thereof by the person entitled to such possession, or his or her agent or attorney, shall refuse or neglect to quit the possession thereof, and deliver the same up to the party entitled thereto, such person or persons so offending shall be deemed guilty of an unlawful detainer, within the meaning of this chapter.

SEC. 4. A defendant shall be deemed and held guilty of wrongful detaining or continuing in the possession of property, within the meaning of this chapter, when such detainer or continuance in possession are shown to have been made or done in bad faith, and with a knowledge that such defendant had no legal right to detain or continue in possession of such lands, tenements, mining claims or other possessions, and the plaintiff having established his right to recover in the action, *prima facie*, the burden of proof shall be upon the defendant, to show that the detainer or continuance in possession was made or done in good faith, and upon legal right in him, or those under whom he claims.

SEC. 5. If any person shall, with or without force, hold over any lands, tenements, mining claims or other possessions, after the termination of the time for which such lands, tenements, mining claims or possessions were let or demised to him or her, or to the person under whom he or she claims, or contrary to the conditions, covenants or terms of the lease or agreement under which he or she holds, or after any rent shall have become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days, in all such cases, after demand made in writing for possession of the premises let or demised, by the person entitled to such possession, his or her agent or attorney, the person or persons so holding shall be deemed and adjudged guilty of an unlawful detainer, within the intent and meaning of this chapter.

SEC. 6. It shall not be necessary in order to work a forfeiture for non-payment of rent, to make a demand for rent on the day on which the same becomes due, or at any particular time of the day, but demand may be made of the tenant or person from whom such rent is due, at any time after the rent is due, and such demand may be made for the whole amount due and unpaid at the time of making the same. The failure on the part of the lessee or his assigns to pay rent, upon such demand being made, or as provided in section five of this chapter, shall work a forfeiture of the lease or agreement.

SEC. 7. In all leases of lands or tenements, or any interest thereon, from month to month, the landlord may and it shall be lawful for him, upon giving notice in writing to the tenant at least fifteen days before the expiration of the month, to change the terms of the lease or agreement under which such tenant holds, to take effect at the expiration of the month; said notice when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease or agreement, the terms and conditions specified in said notice, if such tenant shall continue to hold the premises specified in the notice, after the expiration of such month.

SEC. 8. It is hereby declared to be the intent and meaning of this chapter, that the action of forcible entry and detainer, or unlawful detainer, as the case may be, may be brought and maintained to recover the possession of any lands, tenements, mining claims or other possessions, by persons entitled to the same, in all cases where such persons or those under whom they claim, may have entered or settled upon any of the public lands in this territory, for mining, agricultural or other purposes, as in other cases, and that in no case shall the fact that the title to any property hath not passed from the United States, be deemed or held to bar or defeat the recovery of the plaintiff, and when the same has not been sold by the general government, in the absence of paper title for the purposes of this action, the right of possession in such person or persons shall extend according to the customs of the neighborhood in which said claim is located, to the number of feet, acres or extent embraced in such claim, not exceeding, if for agricultural purposes, one hundred and sixty acres of land.

SEC. 9. The district courts in their respective districts, and probate courts and justices of the peace in their respective counties, shall have jurisdiction of cases arising under this chapter. If the complaint shall be made before a justice of the peace, and it shall appear to such justice from sufficient affidavit, or the evidence presented upon the trial of the cause, that the title or boundaries to the premises in question, is in dispute between the parties, and that an adjudication of the same may be necessary for a final determination of the cause, it shall be the duty of such justice to arrest all proceedings before him, and immediately certify his proceedings, and transmit all the papers in the cause, to the probate court of his county, and the probate court upon receiving such proceedings and papers, shall proceed in the same manner as if the cause had been instituted in that court: *Provided*, that if there shall be no probate judge in the county at the time such proceedings are had, or if the parties, plaintiff or defendant, shall each assent thereto, the justice of the peace shall certify his proceedings and transmit the papers to the clerk of the district court of the county in which the cause originated, or to the clerk of the district court of any county to which such county may be attached for judicial purposes.

SEC. 10. The mode of commencing proceedings under this chapter shall be by filing a complaint in writing with a justice of the peace or probate judge, or in the office of the clerk of the district court of the proper county, and thereupon the justice, probate judge or clerk, as the case may be, shall issue a summons as in other cases, except that it shall command the officer to whom it may be directed, to summon the defendant to answer to the complaint of the plaintiff, for that he (the defendant) is in possession of the lands, tenements, mining claims or other possessions in question, describing them, which he holds unlawfully and against the right of the plaintiff, as it is said; such summons shall be served in the same manner and like length of time before the return day thereof, and by the same officers respectively when issued by a justice of the peace, probate judge, or clerk of the district court, respectively, as in actions of *assumpsit* commenced before such justice or probate judge, or in such district court.

SEC. 11. The complaint filed as provided in section ten of this chapter, shall describe with reasonable certainty the lands, tenements, mining claims or other possessions which the plaintiff seeks to recover, and shall set forth the substantial facts upon which the plaintiff relies to recover the possession of the same, and shall be verified by the oath of the plaintiff, his or her agent or attorney. The plea or answer of the defendant shall be in writing and under oath of the defendant, his or her agent or attorney.

SEC. 12. Upon the trial of cases arising under this chapter before justices of the peace and in probate courts, the proceedings shall be governed by the rules of practice and provisions contained in the chapter concerning justices and constables, except as may be otherwise provided in this chapter, and the probate courts shall be deemed and held to be open at all times for the trial of cases arising under this chapter.

SEC. 13. In cases of trials before justices of the peace and in probate courts, if either party shall feel aggrieved by the verdict of the jury, or decision of the justice or probate judge, he, she or they may have an appeal to the district court of the proper county, in the same manner that is now provided by law for taking appeals from justices of the peace in other cases. But if the defendant or defendants shall appeal, the appeal bond shall be conditioned for the payment of all costs and all damages which have been or may be sustained by the plaintiff or plaintiffs in consequence of the wrongful detention of the premises in question, and in cases where rent has accrued, or will accrue, as double rent under this chapter, for the payment of all rent then due or to become due, if the plaintiff or plaintiffs should recover a judgment in the district court for the possession of the premises in question: *Provided*, That in all cases the party having to sue on said bond may recover double rent for all rent which shall become due after commencing such action; and in all such cases the justice of the peace or probate judge shall have power to fix the amount of the appeal bond, and the appeal shall be taken and perfected within five days from the day on which the judgment is rendered.

SEC. 14. In all cases of appeals from justices of the peace and probate courts, the district court shall proceed to try the cause *de novo*, and no exception to any of the proceedings before the justice or probate court shall be taken or allowed, unless it shall appear that the justice of the peace or probate judge had no jurisdiction of the subject-matter of the suit; and the district and probate courts may receive evidence respecting the title or boundaries of the premises in question, for the purpose of determining the right of possession; but judgments rendered in proceedings under this chapter shall not affect the title to any lands, tenements or other possessions, for the possession of which any action may be brought under the provisions of this chapter, and shall not be a bar to a proper action brought for the trial of the same.

SEC. 15. If upon default on trial, or by the verdict of a jury, it shall appear that the plaintiff is entitled to the possession of the premises in question, he shall have judgment for the possession of the same, and a writ of restitution shall be issued upon such judgment, unless the defendant take an appeal as provided in this chapter; and the officer to whom such writ of restitution shall be directed, shall be commanded in such writ to levy and collect the plaintiff's costs, as in other executions.

SEC. 16. If the plaintiff becomes nonsuit, or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs.

SEC. 17. Appeals and writs of error to the supreme court from the judgments of the district court, and writs of error to the judgment of any probate court in proceedings under this chapter shall be allowed as in other cases: *Provided*, That in addition to the conditions now prescribed by law, the condition of the appeal bond shall be as required by this chapter in cases of appeal from justices of the peace and probate courts to the district court.

SEC. 18. In all cases of tenancy from year to year between persons in this territory, three months' notice to quit shall be deemed sufficient to terminate the same; a six months' tenancy may be terminated by a notice of one month; and ten days' notice to quit shall be sufficient to terminate a monthly tenancy.

Prior Statutes Repealed. An act concerning Forcible Entries and Unlawful Detainer. Approved November 1, 1861. Laws 1861, p. 251.

An act relating to Forcible Entry and Detainer, and Unlawful Detainer. Approved August 15, 1862. Laws 1862, p. 69.

An act concerning Forcible Entry and Detainer, and Unlawful Detainer. Approved March 7, 1864. Laws 1864, p. 91.

CHAPTER XXXVI.

FORDS.

SECTION
1. The public not to be excluded from crossing at any ford, by reason of charter for bridge or ferry near same.

SECTION
2. Owner nor keeper of bridge or ferry to obstruct ford; penalty for such obstruction.

SECTION 1. No charter for a ferry or bridge company, granted by the legislature of this territory, shall be so construed as to authorize such company to exclude or prevent the public from the free use of any ford that may cross any stream at or near the ferry or bridge of such company.

SEC. 2. The owner or keeper of such bridge or ferry shall not in any way obstruct the passage to or from any ford across any stream, and any person upon conviction of thus obstructing such passage, shall be liable to a fine of not less than ten nor more than fifty dollars.

Prior Statutes Repealed. An act relating to Fords. Approved August 15, 1862. Laws 1862, p. 75.

CHAPTER XXXVII.

FRAUDS AND PERJURIES.

SECTION
1. Conveyance made with intent to defraud prior or subsequent purchasers, void as to such purchasers.
2. Not if subsequent purchaser have notice thereof at time, unless grantee privy to fraud.
3. Conveyance with power of revocation void as against subsequent purchasers from the grantor.
4. Conveyance by third person having power of revocation of former conveyance, to be valid, if on valuable consideration, though power of revocation not recited.
5. If conveyance before power of revocation vests, it shall nevertheless be valid, from the vesting of power.
6. What conveyances of land must be in writing.
7. Preceding section not to impair power of testator to devise; nor to prevent implied trusts.
8. Contracts for lease of more than one year, or for sale of lands, void unless in writing.
9. Writing may be subscribed by agent.
10. This chapter not to abridge powers of court of equity to compel specific performance.
11. Conveyance of chattels in trust for the use of vendor, void as to his creditors.

SECTION
12. Certain agreements void unless in writing signed by the party charged.
13. Where goods sold at auction, memorandum of auctioneer a sufficient writing under this statute.
14. Sale of chattels, possession remaining with vendor, presumed fraudulent as against creditors of vendor, and subsequent purchasers; presumption conclusive.
15. The term creditors construed.
16. Any writing required by this chapter may be signed by the agent of party.
17. Conveyances with intent to delay, hinder or defraud creditors.
18. Assignment of any trust not in writing, void.
19. Every instrument declared void as against creditors is also void as against assignees, heirs and personal representatives.
20. Question of fraud, one of fact and not of law; no conveyance fraudulent as against creditors solely on the ground of want o valuable consideration.
21. Purchaser for valuable consideration and without notice of intended fraud of his grantor, not impaired in his right.
22. The term lands construed.
23. The term conveyance construed.

SECTION 1. Every conveyance of any estate or interest in the lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers shall be void.

SEC. 2. No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

SEC. 3. Every conveyance or charge of, or upon any estate or interest in lands, containing any provision for the revocation, determination or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor, for a valuable consideration, of any estate or interest so liable to be revoked, determined or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

SEC. 4. When the power to revoke a conveyance of any lands or the rents or profits thereof, and to re-convey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

SEC. 5. If a conveyance to a purchaser under either of the two last preceding sections shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

SEC. 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing.

SEC. 7. The preceding section shall not be construed to affect, in any manner, the power of a testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

SEC. 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

SEC. 9. Every instrument required to be subscribed by any party, under the last preceding section, may be subscribed by the agent of such party lawfully authorized.

SEC. 10. Nothing in this chapter contained shall be construed to abridge the powers of courts of equity to compel the specific performance of agreements, in cases of part performance of such agreement.

SEC. 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void, as against the creditors existing of such person.

SEC. 12. In the following cases every agreement shall be void unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party charged therewith:

First, Every agreement that by the terms is not to be performed within one year from the making thereof.

Second, Every special promise to answer for the debt, default or miscarriage of another person.

Third, Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promises to marry.

Fourth, Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void, unless: 1st, A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or 2d, Unless the buyer shall accept and receive part of such goods, or the evidence of some of them, of such things in action; or 3d, Unless the buyer shall, at the time, pay some part of the purchase money.

SEC. 13. Whenever goods shall be sold at auction, and the auctioneer shall at the time of sale enter in a sale-book a memorandum, specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person for whose account the sale is made, such memorandum shall be deemed a note of the contract of such sale, within the meaning of the last preceding section.

SEC. 14. Every sale made by a vendor of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things sold or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith, and this presumption shall be conclusive.

SEC. 15. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor, at any time whilst such goods and chattels shall remain in his possession or control.

SEC. 16. Every instrument required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by the lawful agent of such party.

SEC. 17. Every conveyance or assignment in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents and profits issuing thereupon, and every charge upon lands, goods or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay or defraud creditors or other persons, of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered with the like intent, as against the person so hindered, delayed or defrauded, shall be void.

SEC. 18. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void.

SEC. 19. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this chapter, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives, or assignees of such creditors or purchasers.

SEC. 20. The question of fraudulent intent, in all cases arising under the provisions of this title, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

SEC. 21. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

SEC. 22. The term "lands," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments;" and the term "estate, and interest in lands," shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent in lands as above defined.

SEC. 23. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

Prior Statutes Repealed. An act concerning Fraudulent Conveyances and Contracts relative to real and personal property. Approved October 31, 1861. Laws 1861, p. 242.

CHAPTER XXXVIII.

FUGITIVES FROM JUSTICE.

SECTION
1. Duty of governor on receipt of requisition from executive of any other state or territory.
2. Governor demanding fugitive from another state or territory to issue warrant, and appoint messenger to receive such fugitive.
3. Expense to be paid from territorial treasury, on certificate of governor.
4. Person charged here, with a felony committed in another state or territory, may be arrested and committed to jail, or admitted to bail to await requisition; proceedings in such case.

SECTION
5. District court on appearance of prisoner recognized, may continue or discharge recognizance.
6. Forfeited recognizance to inure to benefit of territory.
7. When complaint made against any fugitive, justice of peace to take security for costs; proceedings upon such bond.
8. Parties charged or convicted of certain offences escaping, governor may offer reward for their apprehension.

SECTION 1. Whenever the executive of any other state or of any territory of the United States, shall demand of the executive of this territory, any person as a fugitive from justice, and shall have complied with the requisitions of the act of congress in that case made and provided, it shall be the duty of the executive of this territory to issue his warrant under the seal of the territory to apprehend the said fugitive, directed to any sheriff, coroner or constable of any county in this territory, or other persons whom the said executive may think fit to intrust with the execution of said process. Any of the said persons may execute such warrant anywhere within the limits of this territory, and convey such fugitive to any place within this territory which the executive in his warrant shall direct.

SEC. 2. Whenever the executive of this territory shall demand a fugitive from justice from the executive of any other state or territory, he shall issue his warrant under the seal of the territory to some messenger, commanding him to receive the said fugitive and convey him to the sheriff of the proper county where the offence was committed.

SEC. 3. The expenses which may accrue under the last preceding sections, being first ascertained to the satisfaction of the executive, shall on his certificate, be allowed and paid out of the territorial treasury on the warrant of the auditor.

SEC. 4. Whenever any person within this territory shall be charged upon the oath or affirmation of any credible witness, before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting, in any other state or territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If upon examination it shall appear to the satisfaction of such judge or justice that the said person is guilty of the offence alleged against him, it shall be the duty of the judge or justice to commit him to the jail of the said county, or if the offence is bailable according to the laws of this territory, to take bail for his appearance at the next district court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner and those who bring him, to writing, and to return the same to the next district court of the county where such examination is had, as in other cases, and shall also send a copy of the examination and proceeding to the executive of this territory, as soon thereafter as may be. If in the opinion of the executive of this territory, the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the state or territory where the crime is alleged to have been committed, of the proceedings which have been had against such person and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand. When such demand shall be made, the executive of this territory shall forthwith issue his warrant under the seal of the territory, to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this territory. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the territory, and to surrender him agreeably to said warrant.

SEC. 5. In cases where a party shall have been admitted to bail, and shall appear at the district court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of said court to discharge the said recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time that hath intervened since the arrest of the party, and the strength of the evidence against him. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison, or exonerated from his recognizance as the case may be.

SEC. 6. If the recognizance shall be forfeited, it shall inure to the benefit of the territory.

SEC. 7. In all cases where complaint shall be made as aforesaid, against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond to the clerk of the district court, conditioned for the payment of costs, as above, which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the district court, and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee-bill as in other cases, to be served on the persons named in the bond, or any of them, which fee-bill shall be served and returned by the sheriff; for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next district court to be holden in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee-bill has been served, and when the said fees are collected, shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to one dollar for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services. Nothing herein contained shall prevent the clerk from instituting suits on said bonds in the ordinary mode of judicial proceedings, if he shall deem it proper.

SEC. 8. If any person charged with or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery or counterfeiting; shall break prison, escape or flee from justice, or abscond and secrete himself, in such cases it shall be lawful for the governor, if he shall judge it necessary, to offer any reward not exceeding two hundred dollars for apprehending and delivering such person unto custody of such sheriff, or other officer as he may direct. The person or persons so apprehending and delivering any such person as aforesaid, producing to the governor the sheriff's or justice's receipt for the body, it shall be lawful for the governor to certify the amount of such claim to the auditor, who shall issue his warrant on the treasury for the same.

Prior Statutes Repealed. An act concerning Fugitives from Justice. Approved November 7, 1861. Laws 1861, p. 148.

CHAPTER XXXIX.

GAME.

SECTION
1. Taking, killing, insnaring or trapping any pheasant, quail, prairie-hen or chicken before January 15, 1869, forbidden.
2. Killing or trapping elk, deer, antelope, fawn, mountain-sheep or wild-turkey, within certain seasons, forbidden.
3. Buying, selling or having in possession any of birds named in first section before the 15th of January, 1869, forbidden.
4. Having in possession the game named in section two, in the season named, unlawful.

SECTION
5. Sections two and four to apply to birds named in section one, after January 15, 1869.
6. Penalty for violation of sections one and three.
7. Penalty for violation of sections two and four.
8. Penalty how recovered.
9. Informers competent witnesses.
10. Section two above repealed.

SECTION 1. It shall be unlawful for any person to kill, insnare or trap any pheasant, quail, prairie-hen or prairie-chicken, in the territory of Colorado, until the fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

SEC. 2. It shall be unlawful for any person to kill, insnare or trap any elk, deer, antelope, fawn, mountain-sheep, or wild-turkey, between the fifteenth day of January and the fifteenth day of August, of each and every year.

SEC. 3. It shall be unlawful for any person to buy, sell or have in possession, any of the birds named in the first section of this chapter, until the fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

SEC. 4. It shall be unlawful for any person to buy, sell or have in possession any animal or bird named in the second section of this chapter, at any time between the fifteenth day of January and, the fifteenth day of August, of each and every year.

SEC. 5. The provisions of sections two and four of this chapter shall apply to the birds named in section one of this chapter, from and after the fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

SEC. 6. Any person who shall violate any of the provisions of sections one and three of this chapter, for each and every violation thereof shall forfeit and pay the sum of thirty dollars, one half to go to the informer, and the other half to the territorial treasury, and to be recovered in an action of debt in the name of the people of Colorado territory.

SEC. 7. Any person who shall violate any of the provisions of sections two and four of this chapter, shall forfeit and pay the sum of fifty dollars, for each and every offence, one half to go to the informant, and the other half to the territorial treasury, and to be recovered in an action of debt in the name of the people of Colorado territory.

SEC. 8. The penalties named in this chapter may be sued for and recovered before any justice of the peace, or judge of probate, in the county in which the provisions of this chapter have been violated.

SEC. 9. Informers shall not be excluded, by reason of interest, from giving testimony in any case which may be brought under the provisions of this chapter.

An act to amend an act entitled An act to preserve Game in the Territory of Colorado.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 10. (I.) That every provision of the act entitled An act to preserve game in the territory of Colorado, approved January 11, 1867, which makes it unlawful to kill, insnare or trap elk, deer, antelope, fawn, mountain-sheep or wild-turkey, or to buy, sell or have in possession any of the above-named animals or birds, be and the same are hereby repealed.

SEC. 11. (II.) This act shall take effect and be in force from and after its passage.

Prior Statutes Repealed. An act to preserve Game in the Territory of Colorado. Approved January 11, 1868. Laws 1868, p. 63.

CHAPTER XL.

GUARDIAN AND WARD.[1]

SECTION

1. At what age orphan minors may choose guardians; court of probate to appoint, when.
2. Orphan minor above fourteen years of age, to be notified to appear and choose guardian; on default, court to appoint guardian.
3. Orphan having estate not derived from his father, father to be notified before appointment or choice; father may be appointed, if a proper person; guardian other than the father to have control of estate, but not of person of ward.
4. Guardians to prosecute and defend for their wards.
5. Guardian to give bond; amount; security; condition; not to be void on first recovery; may be sued to use of any person entitled.
6. Court of probate may compel guardian to render account on oath, and to give supplementary security; penalty for failure.
7. May remove guardian for cause; may appoint others; may compel guardian removed, or executors of one deceased, to deliver up to successor effects of minor; may commit to prison for a failure to comply with the order in such case.
8. Guardian may sue for moneys of minor; shall lend money of ward, on mortgage, to be approved by court; lending to be for one year; interest to be compounded each year; may lease lands of ward, with approval of court.
9. Guardian to superintend education of ward; may pay out of ward's money therefor as court may direct; interest and rents to be first applied.

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(1) The statute concerning guardian and ward was not intended as a complete code, but to confer upon the probate court power to appoint guardians and regulate their conduct according to their duties at common-law. *Bond* v. *Lockwood*, 33 Ill. 218.

SECTION
10. District court may direct sale of ward's lands; proceedings thereon.
11. Moneys arising from sale to be accounted for to probate court; to be subject to order of court.
12. Appeals to be allowed from probate to district court.
13. Minors may sue by next friend; bond for costs to be filed.
14. Education of ward.
15. Guardians may loan money on personal security, with approval of court; not for longer than one year.

SECTION
16. Compensation of guardian.
17. Father, or mother being sole, and not restrained by will of father, may dispose of custody and tuition of child by deed or will.
18. Rights, powers and duties under such disposition.
19. Custodian of minor may maintain action for wrongful detention of ward; shall have charge of minor's estate.
20. District court may remove guardian and appoint a successor; powers of court in such case; may require guardian appointed by father or mother to give bond.

SECTION 1. Courts of probate in their respective counties, shall admit orphan minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years.[2]

SEC. 2. Whenever it shall be represented to said court that any orphan minor above the age of fourteen years has not a guardian, it shall be the duty of said court to issue a notification to such minor to appear before the said court, at a time therein specified, and choose a guardian; and if such minor shall neglect or refuse to appear, or appearing, shall neglect to choose a guardian, the said court shall appoint one for such minor, as if such minor were under the age of fourteen years.

SEC. 3. When a minor, having a father living, shall be entitled to, or possessed of, any estate, real or personal, not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor shall not be appointed; and if sufficient reason be not shown, may appoint the father, if he be a proper person; if not, then such other person as the minor, if of the age of fourteen years, may choose. If such minor shall refuse or neglect, or be not of sufficient age, to choose a guardian, the court shall appoint some fit person to be guardian for such minor; and when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

SEC. 4. Guardians, by virtue of their office as such, shall be allowed, in all cases, to prosecute and defend for their wards.

SEC. 5. The court of probate shall take, of each guardian appointed under this chapter, bond, with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows: The condition of this obligation is such, that if the above bounden A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian, according to law, and shall render a fair and just account of his guardianship, to the probate court of the

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(2) It seems that on arriving at the age of fourteen the infant may select a guardian though he have one already, by appointment of the court. *Young* v. *Lorain*, 11 Ill. 636.

But the guardian previously appointed will continne to hold his office, after the arrival of the ward at the age of fourteen, unless the ward select another guardian. *Ibid.*

county of ——, from time to time, as he shall be thereto required by said court, and comply with all the orders of said court, lawfully made, relative to the goods, chattels and moneys of such minor, and render and pay to such minor all moneys, goods and chattels, title papers, and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such court so direct, then this obligation shall be void, otherwise to remain in full force and virtue. Which bond shall be taken, to the people of the territory of Colorado, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time, against all, or any one or more of the obligors, and to the use and benefit of any person entitled, by a breach thereof, until the whole penalty shall be recovered thereon. In all cases of any person being appointed guardian for more than one ward, at one time, the judge of probate shall include all in one bond.

SEC. 6. Courts of probate shall have power, in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianship, to said courts for adjustment, and shall have power to compel such guardians to give supplementary security, whenever it shall judge proper, and in default thereof to remove such guardians.[3]

SEC. 7. The court of probate, in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered upon record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this chapter; and when any guardian shall be removed, or die, and a successor be appointed, the court shall have power to compel such guardian so removed, or the executors or administrators of a deceased guardian, to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who may have the same, and upon failure, to commit the party offending to prison until he, she or they comply with the order of the court.

SEC. 8. Guardians shall have power to demand, sue for and receive all moneys belonging to their wards, from executors or

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(3) The allowance of the account of the guardian is a judicial act; and the order of the court is *prima facie* evidence of the correctness of the account, even as against the heir. *Bond* v. *Lockwood*, 33 Ill. 218.

administrators, as soon as the same may be collected; or of any other person or persons in whose hands or possession the same may be; and it shall moreover be their duty to put to interest the moneys of their wards, upon mortgage security, to be approved by the court; which letting shall always be for one year, and at the end of each year the interest shall be added and made part of the principal; and said guardian shall also have power to lease the real estate of the ward, upon such terms and for such length of time as the court of probate shall direct: *Provided*, Such leasing shall never be for a longer time than during the minority of the ward, and the minority of females shall cease at the age of eighteen years.

SEC. 9. The guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the ward, and for that purpose may pay out such portions of the ward's money as the court of probate shall from time to time by order direct:[4] *Provided*, That the rents and profits arising from his estate, and next the interest on the ward's money, shall always be first resorted to for the education and nurture of the ward.

SEC. 10. The district court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all the personal estate, order the sale of the real estate of the ward, on the application of the guardian by petition in writing stating the facts, and having given notice to all persons concerned, of such intended application, in some public newspaper printed in the territory, or by setting up written notices in three of the most public places in the county, at least three weeks before the sitting of the court; such order may enable the guardian to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estate. The court, in such order, shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security from the guardian and purchaser as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to make return of such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchasers all the interest the ward had in the estate so sold; application for the sale of such real estate shall be made to the court of the county where the whole or part of the estate shall be situated.[5]

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(4) The guardian cannot expend the ward's money for any purpose, except upon the order of the probate court. *Davis Admr.* v. *Harkness*, 1 Gilm. 178.

(5) To justify an order of sale of the realty under this statute, the petition must, upon its face, show such a state of facts as is contemplated by the statute; otherwise the whole proceeding will be void. *Young* v. *Lorain*, 11 Ill. 636.

A petition stating, in substance, that no money or personal property of the ward's had at any

SEC. 11. An account of all moneys received by any guardian for any sale of real estate of any minor, as aforesaid, shall be returned on oath, by such guardian, to the court of probate of the county where letters of guardianship were obtained, and such moneys shall be accounted for, and shall be subject to the order of the court of probate, in like manner as other moneys belonging to such minor.

SEC. 12. Appeals shall be allowed, in all cases, from the order or judgment of the court of probate, the same in manner, as is provided by law relative to wills and testaments, for executors and administrators and the settlement of intestates' estates.

SEC. 13. Minors may bring suits in all cases whatever, by any person they may select as their next friend; and the person so selected, shall file bond, with the clerk of the district court, or justice of the peace, before whom the suit may be brought, acknowledging himself bound for all costs that may accrue and legally devolve on such minor; after such bond shall have been so filed, said suit shall progress to final judgment and execution, as in other cases.

SEC. 14. Guardians shall educate their wards; and it is hereby made the duty of all civil county officers, to give information to the court of probate, of neglect or omission of any guardian to educate his or her ward: *Provided*, When there are not moneys sufficient to teach the ward to read and write, and ground rules of arithmetic, and the guardian refuses and neglects to have him so educated, the court shall have power to put out to any other person, the ward, for the purpose of having the same so educated; the judge of probate shall, in all cases when information is made of the neglect of any guardian to educate his or her ward, and on the facts being established, to remove such guardian, and appoint a suitable person to act as guardian and superintend the education of such minor orphan.

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time come to the guardian's hands, and there was neither money, personal property or other means for their support and education, was held to be sufficient. *Ibid.* And see *Harvey, guardian, etc.*, 16 Ill. 127.

The guardian cannot apply to the district court of his own motion; he must act under the direction of the probate court. Breese, J., in *Loyd* v. *Malone*, 23 Ill. 47.

The conveyance by the guardian is inoperative until his proceedings are approved by the court. *Young* v. *Keogh*, 11 Ill. 642. 15 Ill. 179, 433, 444.

And upon such approval, the entire authority of the guardian with reference to the sale is ended. 11 Ill. 636.

The court of chancery cannot confirm the title of a purchaser, where the proceedings of the guardian have not been reported and approved; for the purchaser in such case has no title; not even an equity. *Young* v. *Dowling*, 15 Ill. 481, 485.

But it is not essential that the report should be presented at the term ensuing the sale; a report presented many years subsequent may be received and approved, where the delay does not appear to have arisen from an improper purpose. *Harvey, guardian, etc.*, 16 Ill. 127.

The guardian's report need not be supported by ancillary proofs of the facts stated therein; he is an officer of the court for the purposes of the sale, and his report, like a sheriff's return upon process, is to be taken as true. *Ibid.*

It is not essential that the ward should be made defendant to the petition; the proceeding is in his favor, and not against him. *Smith* v. *Race*, 27 Ill. 391.

SEC. 15. Guardians shall have power to loan out the moneys of their wards, at interest, in sums not exceeding one hundred dollars, on personal security, to be approved by the judge of probate: *Provided*, It shall not be let for a longer time than twelve months without a renewal, and an approval of the security by the court, and if neglected longer, it shall be at the responsibility of the guardian. In all cases of any person being appointed guardian for more than one ward, at one time, the judge of probate shall include all in one bond.

SEC. 16. Guardians on final settlement shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are or shall be allowed by law, to administrators.

SEC. 17. Every father of sound mind and memory of a child likely to be born, or of any living child under the age of twenty-one years, and unmarried, may, by his last deed or will duly executed, dispose of the custody and tuition of such child during its minority, or for a less time, to any person or persons in possession or remainder; and every mother of sound mind and memory, being sole, may, in like manner, dispose of the custody and tuition of a child living, if a father has made no such disposition, or in any other manner restrained the right of the mother.[6]

SEC. 18. Every such disposition, from the time it shall take effect, shall invest in the person or persons to whom it shall be made, all the rights and powers, and subject him or them to all the duties and obligations, of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody and tuition of such minor: *Provided*, That the rights, powers, duties and obligations of such person or persons may be restrained and regulated by the person making such deed or last will, as aforesaid.

SEC. 19. Any person to whom the custody of any minor is so disposed of, may take the custody and tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor; he shall also take the custody and management of the real and personal estate of such minor, unless restrained by the deed or will, as aforesaid, during the time for which such disposition shall have been made, and bring such actions in relation thereto as a guardian appointed under the provisions of the laws of this territory.

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(6) F., dying, by his last will appointed G., his widow, guardian of an infant daughter, "for so long as she shall remain my widow." *Held* that the testator might lawfully impose such a condition upon the appointment. *Holmes* v. *Field*, 12 Ill. 428.

In the same case, that upon her subsequent marriage the guardianship of the widow immediately ceased. *Ibid.*

The probate court has no authority to issue letters of guardianship as to an infant to whom a testamentary guardian has already been lawfully appointed. *Ibid.*

SEC. 20. Guardians appointed under the provisions of this chapter, shall be subject to removal, upon complaint of any person, in behalf of the minor, to the district court of the county in which such guardian may reside, and proof made of malconduct or misbehavior in the performance of his duties, or of a failure to perform his duties; and upon the removal of a guardian, the said court is hereby vested with the power to appoint another guardian, and to make all such orders as may be necessary to compel the guardian removed to deliver over to his successor the custody of the minor, and to account for the estate, and pay over all moneys belonging to the ward, and to compel such successor to execute a bond, with good security, in such penal sum, and with such conditions, as the court may deem necessary for the security of the rights of the minor; and the said court shall also have power, upon application of any person in behalf of the minor, to require all guardians appointed under the provisions of this chapter, by the father or mother, or by the court, to give bond and security, in such penalty and with such conditions as the court may deem necessary for the security and protection of the minor, and of his or her estate.

Prior Statutes Repealed. An act concerning Guardian and Ward. Approved November 6, 1861. Laws 1861, p. 344.

An act to amend an act entitled An act concerning Wills, Executors and Administrators. Approved March 11, 1864. Laws 1864, p. 151.

CHAPTER XLI.

HABEAS CORPUS.

SECTION

1. Who may grant writ; application; to be accompanied by copy of warrant of commitment; writ how issued; seal; how indorsed; before whom returnable; when returnable.
2. Party restrained of his liberty but not for any criminal matter, may petition for discharge on *habeas corpus;* proceedings as in other cases.
3. Day to be set for hearing; prisoner may traverse return, or allege facts showing his right to discharge, to be made on oath; amendment of return; court to hear testimony; in what cases prisoner may be discharged if detained under process; where commitment irregular, court may direct a new commitment, or admit to bail, etc.
4. Recognizance; witnesses to be recognized; recognizance to be certified and returned into court; failure of judge to recognize prisoner or witness a misdemeanor.
5. Prisoner remanded, to be accompanied by statement of causes of remand; on second writ of *habeas corpus* officer to accompany return with such statement.
6. On second writ of *habeas corpus*, prisoner if clearly charged with the commitment of a criminal offence, can only be admitted to bail.
7. After discharge on *habeas corpus*, prisoner not to be restrained for same cause, unless afterwards indicted therefor, nor unless by order of the court in which he is recognized to appear; what shall not be deemed the same cause.
8. Person committed for criminal matter and not admitted to bail, and not tried on or before second term, shall be discharged, unless the delay occurred on his own application; court may continue cause to third term, if for other than a capital offence; what showing required.
9. Prisoner not to be removed out of county within fifteen days next preceding the term at which he is to be tried, except to convey him to county where offence is triable.

SECTION

10. Prisoner committed for criminal offence not to be removed from custody, except on a legal writ; or in order to his discharge or trial; or in case of infection or fire; or for confinement in another county; or where prisoner claimed by executive of the United States, or another state, etc.; penalty for issuing warrant of commitment in violation of this section.
11. Penalty for refusal to issue the writ of *habeas corpus*, or corruptly delaying, where proper application made.
12. Sheriff or other officer failing to return writ may be committed for contempt; forfeiture to party aggrieved; disqualification from office.
13. Removing party in custody, or transferring custody to another, or concealing him with intent to avoid writ, penalty for; need not appear that the writ was issued at time of removal, transfer, etc.
14. Refusal to give prisoner copy of commitment on demand; penalty.
15. Penalty for second arrest of a party, after discharge on *habeas corpus*, for same cause.
16. Penalties under this act, how recovered; for whose use.
17. Plea in prosecution for such penalties.
18. Recovery of penalty no bar to a civil suit.
19. *Habeas corpus, ad testificandum*, who may issue; proceedings in such case, or where the writ is issued to bring in principal in discharge of his bail.

SECTION 1. If any person shall be committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or district courts, in term time, or any judge thereof, in vacation, for a writ of *habeas corpus;* which application shall be in writing, and signed by the prisoner or some person on his behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The said court or judge to whom the said application shall be made, shall forthwith award the said writ of *habeas corpus*, unless it shall appear from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved; which said writ, if issued by the court, shall be under the seal of the court, if by a judge, under the hand of a judge, and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith; to the intent, that no officer, sheriff, jailer, keeper or other person, to whom such writ shall be directed, may pretend ignorance thereof, every such writ shall be indorsed with these words, "By the *habeas corpus* act;" and whenever the said writ shall, by any person, be served upon the sheriff, jailer or keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his underofficers or deputies, at the jail or place where the prisoner is detained, he, or some of his underofficers or deputies, shall, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the court or judge awarding the said writ, and indorsed thereon, not exceeding fifteen cents per mile, and upon sufficient security given to pay the charges of carrying him back, if he shall be remanded, make return of such writ, and bring, or cause to be brought, the body of the prisoner, before the court or judge who granted the writ, or in case of the adjournment of the said court or absence of the judge, then before any other of the judges aforesaid, and certify the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable; if beyond the distance of twenty miles, and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

SEC. 2. When any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty, under any color or pretence whatever, he or she may apply for a writ of *habeas corpus* as aforesaid, in writing, signed by the party or some person in his behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained; which application or petition shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf; if the confinement or restraint is by virtue of any judicial writ or process or order, a copy thereof shall be annexed thereto, or an affidavit made that the same has been demanded and refused; the same proceedings shall thereupon be had in all respects as are directed in the preceding section.

SEC. 3. Upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The prisoner may deny any of the material facts set forth in the return, or may allege any fact to show either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge; which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge, before or after the same is filed, as also may all suggestions made against it, that thereby all material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the facts by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner and the person who holds him in custody; and shall dispose of the prisoner as the case may require. If it appear that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes. *First*, Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum or person. *Second*, Where, though the original imprisonment was lawful, yet, by some act, omission or event which has subsequently taken place, the party has become entitled to his discharge. *Third*, Where the process is defective in some substantial form required by law. *Fourth*, Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest to issue. *Fifth*, Where, although in proper form, the process has been issued or executed by a person unauthorized to issue or execute the same, or where the person having the custody of the prisoner, under such process, is not the person empowered by law to detain him. *Sixth*, Where the process appears to have been obtained by false pretence or bribery. *Seventh*, Where there is no general law, nor any judgment, order or decree of a court to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding. No court or judge, on the return of a *habeas corpus*, shall, in any other manner, inquire into the legality or justice of a judgment or decree of a court legally constituted. In all cases where the imprisonment is for a criminal, or supposed criminal matter, if it shall appear to the said court or judge that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been informally made, or without due authority, or the process may have been executed by a person not authorized, the court or judge shall make a new commitment in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

SEC. 4. When any person shall be admitted to bail on *habeas corpus*, he shall enter into recognizance, with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner and the nature of the offence, conditioned for his or her appearance at the next district court to be holden in and for the county where the offence was committed, or where the same is to be tried. Where any court or judge shall admit to bail or remand any prisoner, brought before him or them on any writ of *habeas corpus*, it shall be the duty of the said court or judge to bind all such persons as do declare anything material to prove the offence with which the prisoner is charged, by recognizance, to appear at the proper court having cognizance of the offence, on the first day of the next term thereof, to give evidence touching the said offence, and not to depart the said court without leave; which recognizance, so taken, together with the recognizance entered into by the prisoner, when he is admitted to bail, shall be certified and returned to the proper court, on the first day of the next succeeding term thereof; if any such witness shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail, until he shall enter into such recognizance, or he be otherwise discharged by due course of law; if any judge shall neglect or refuse to bind any such witness or prisoner, by recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

SEC. 5. When any prisoner, brought up on a *habeas corpus*, shall be remanded to prison, it shall be the duty of the court or judge remanding him, to make out and deliver to the sheriff, or other person to whose custody he shall be remanded, an order, in writing, stating the cause or causes of remanding him. If such prisoner shall obtain a second writ of *habeas corpus*, it shall be the duty of such sheriff, or other person to whom the same shall be directed, to return therewith the order aforesaid; and if it shall appear that the said prisoner was remanded for any offence adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

SEC. 6. It shall not be lawful for any court or judge, on a second writ of *habeas corpus* obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offence; but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offence is bailable by law, or remand him to prison, where the offence is not bailable, or where such prisoner shall fail to give the bail required.

SEC. 7. No person who has been discharged by order of a court or judge, on a *habeas corpus*, shall be again imprisoned, restrained or kept in custody for the same cause, unless he be afterwards indicted for the same offence; nor unless by the legal order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause: *First*, If, after a discharge for a defect of proof, or on any material defect in the commitment, in a criminal case, the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offence. *Second*, If, in a civil suit, the party has been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process, for the same cause of action. *Third*, Generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal, and the forms required by law, observed.

SEC. 8. If any person shall be committed for a criminal or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offence, the prisoner shall be set at liberty by the court, unless the delay shall happen on the application of the prisoner. If such court at the second term shall be satisfied that the due exertions have been made to procure the evidence for and on behalf of the people, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term. If any such prisoner shall have been admitted to bail for a crime other than a capital offence, the court may continue the trial of said cause to a third term if it shall appear by oath or affirmation that the witnesses for the people of the territory are absent, such witnesses being mentioned by name, and the court shown wherein their testimony is material.

SEC. 9. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on *habeas corpus* under this chapter, out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried; except it be to convey him or her into the county where the offence with which he or she stands charged, is properly cognizable.

SEC. 10. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper or other person, or his underofficer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody into any other prison or custody, unless it be by *habeas corpus*, or some other legal writ; or where the prisoner shall be delivered to the constable or other inferior officer to be carried to some common-jail; or shall be removed from one place to another within the county, in order to his discharge or trial in due course of law; or in case of sudden fire, infection or other necessity; or where the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the chapter concerning jails and jailers; or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of the United States or territories; if any person shall after such commitment as aforesaid, make out, sign or countersign any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or aggrieved party a sum not exceeding three hundred dollars, to be recovered by the prisoner or party aggrieved, in the manner hereinafter mentioned.

SEC. 11. Any judge empowered by this chapter to issue writs of *habeas corpus*, who shall corruptly refuse to issue such writ when legally applied to, in a case where such writ may lawfully issue, or who shall for the purpose of oppression, unreasonably delay the issuing of such writ, shall for every such offence, forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

SEC. 12. If any officer, sheriff, jailer, keeper or other person to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of said writ, within the time required by this chapter, all and every such officer, sheriff, jailer, keeper or other person, shall be deemed guilty of contempt of the court or judge who issued said writ; whereupon the said court or judge may and shall issue an attachment against such officer, sheriff, jailer, keeper or other person, and cause him or them to be committed to the jail of the county, there to remain without bail or mainprise, until he or they shall obey the said writ; such officer, sheriff, jailer, keeper or other person shall also forfeit to the prisoner or aggrieved party a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

SEC. 13. Any one having a person in his custody, or under his restraint, power or control, for whose relief a writ of *habeas corpus* is issued, who with the intent to avoid the effect of such writ shall transfer such person to the custody, or place him or her under the control of another, or shall conceal him or her, or change the place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of this territory, shall forfeit for every such offence, one thousand dollars, and be imprisoned not less than one year, nor more than five years. In any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of *habeas corpus* had issued at the time of the removal, transfer or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

SEC. 14. Any sheriff, or his deputy, any jailer or coroner, having custody of any prisoner committed on a civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment by virtue of which he is imprisoned, within six hours after the demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

SEC. 15. Any person who, knowing that another has been discharged by order of a competent judge or tribunal, on a *habeas corpus*, shall, contrary to the provisions of this chapter, arrest or detain him again, for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offence, and one thousand dollars for every subsequent offence.

SEC. 16. All the pecuniary forfeitures under this chapter, shall inure to the use of the party for whose benefit the writ of *habeas corpus* issued, and shall be sued for and recovered, with costs, in the name of the territory, by every person aggrieved.

SEC. 17. In any action or suit, for any offence against the provisions of this chapter, the defendant or defendants may plead the general issue, and give the special matter in evidence.

SEC. 18. The recovery of the said penalties shall be no bar to a civil suit for damages.

SEC. 19. The supreme and district courts within this territory, or the judges thereof, in vacation, shall have power to issue writs of *habeas corpus*, for the purpose of bringing the body of any person confined in any jail within the same, before them, to testify or be surrendered in discharge of bail. When a writ of *habeas corpus* shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this territory out of the county in which such principal or witness is required to be surrendered or to testify, the writ may run into any county in this territory, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered or his bail discharged, or a person testifying as aforesaid, shall by the officer executing such writ, be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of *habeas corpus* shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively.

Prior Statutes Repealed. An act regulating proceedings on writ of *Habeas Corpus*. Approved November 7, 1861. Laws 1861, p. 353.

CHAPTER XLII.

IMPRISONMENT FOR DEBT.

No imprisonment or arrest for debt, upon any contract express or implied.

There shall be no imprisonment or arrest for debt in this territory, in any case, upon any contract, expressed or implied.

Prior Statutes Repealed. An act concerning Imprisonment for Debt. Approved November 5, 1861. Laws 1861, p. 67.

CHAPTER XLIII.

INJUNCTIONS.

SECTION

1. District court, or any judge thereof in vacation, or the master in chancery in absence of such judge from county, may grant writ of injunction; no injunction to stay proceedings on judgment of justice, not exceeding twenty dollars.
2. Injunction to stay proceedings at law to be prayed and granted in county where judgment obtained or suit pending; subpœna to be sent to county where defendant resides.
3. Injunctions to stay proceedings at law; to operate as a release of errors; bond; damages on dissolution of injunction, to be awarded by court; execution to issue.
4. Disobedience of injunction; attachment therefor.
5. Notice to be given to opposite party of application for injunction, *except* where affidavit is filed showing that irreparable mischief will ensue if notice be given; or that case is too urgent to admit of delay; or where bill shows that defendant may commit the acts complained of; or where cause is already pending, and defendant served with process.
6. Motion to dissolve injunction; may be made in term or vacation; testimony to be heard; complainant may have a continuance of motion for cause shown; affidavits filed with bill or answer to be considered on hearing of motion; depositions taken for such hearing, may be read on final hearing of cause; motion to dissolve not to be heard in vacation where injunction granted upon notice.
7. Application for injunction, or motion to dissolve injunction, to be made to any judge of district court when the proper judge is absent from the county.
8. On motion to dissolve injunction in vacation, the judge may dissolve or continue it, as if in term-time.
9. Not necessary to granting injunction that bill should be first filed.

SECTION 1. The district courts in term-time, and any judge thereof in vacation, or in case of the absence of the judges from the county, the master in chancery, shall have power to grant writs of injunction; no writ of injunction shall be granted, to stay proceedings under a judgment obtained before a justice of the peace, for a sum not exceeding twenty dollars besides costs.

SEC. 2. When any injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained or the suit is pending, and the writ of subpœna may be sent, in the first instance, into any county within this territory, where the defendant resides.

SEC. 3. No injunction shall be granted to stay any judgment at law, for a greater sum than the complainant shall show himself equitably not bound to pay, and so much as shall be sufficient to cover costs; every injunction, when granted, shall operate as a release of all errors, in the proceedings at law that are prayed to be enjoined; no injunction shall be issued, unless the complainant shall have previously executed a bond, with sufficient surety, to the defendant, approved by the court or judge granting such injunction, and filed with the clerk, in double the sum directed to be enjoined, conditioned for the payment of all money and costs due, or to be due, to the plaintiff in the action of law, and also, all such costs and damages as shall be awarded against the complainant, in case the injunction shall be dissolved; or such bond may be entered into before the clerk of the district of the county where the writ is required to be issued, the court or judge granting the injunction, having first approved the security; if the injunction be dissolved in whole or in part, the complainant shall pay, exclusive of legal interest and costs, such damages as the court shall award, not exceeding ten per cent., on such part as may be released from the injunction; and the clerk shall issue execution for the same, when he issues execution on such judgment.

SEC. 4. If any person against whom a writ of injunction shall be issued, shall after the service thereof, be guilty of disobedience to, and breach of, the said injunction, it shall be lawful for the judge granting the same, or if the same were granted in open court, then for any judge of that court, in vacation, to issue an attachment against the said person, for a contempt; upon his being brought before the said judge, unless he shall disprove or purge the said contempt, the said judge may, in his discretion, commit him to jail until the sitting of the court in which the said injunction is pending, or take bail for his appearance in the said court at the next term thereof, to answer for the said contempt, and to abide the order of the court thereon.

SEC. 5. Whenever application shall be made for a writ of injunction, the party intending to make such application shall give notice to the opposite party of the time and place of making such application, at least six days prior to making the same: *Provided*, That if such application shall be made to the court in term-time, in a cause pending in such court, in which the defendant or defendants shall have been served with process, ten days prior to the term at which such application shall be made, or if the complainant shall file an affidavit showing that irreparable mischief or injury will result to him if notice be given, or that the case is too urgent to admit of the delay incident to giving notice, or where it appears from the bill of complaint that the defendant or defendants may commit the acts concerning which injunction relief is sought, before the motion can be heard, no such notice shall be required, but the court or judge shall proceed to hear the application *ex parte*.

SEC. 6. In all causes in which writs of injunction may be issued, the defendant or defendants may, at any time after filing a demurrer plea or answer to the bill of complaint, and whether in term-time or in vacation, move the court, or if application shall be made in vacation, the judge thereof, to dissolve the injunction; if the defendant or defendants shall have filed a plea or answer to the bill, it shall be lawful for the parties respectively, upon the hearing of such motion, to introduce testimony in support of the bill, and plea or answer; and the court or judge shall decide such motion upon the weight of testimony, without being bound to regard the plea or answer as absolutely true. If at or before the time designated for the hearing of such motion, the complainant, or some credible person for him, shall make and file in the cause an affidavit showing the complainant hath a witness or witnesses by whom he can disprove the answer, or some material part thereof, giving the name or names of such witness or witnesses, his or their place of abode, and the particular facts which the complainant will prove by him or them, and that the complainant has had no opportunity to procure the testimony of such witness, since the coming in of the plea or answer, the court or judge, if satisfied that the testimony of such witness or witnesses will be material upon the hearing of such motion, shall grant a continuance of the hearing, for such reasonable time as may be necessary to enable the complainant to procure the testimony of such witnesses; affidavits filed with the bill, plea or answer, and the depositions of witnesses in writing, taken and certified, as in other cases in chancery proceedings, may be heard and shall be considered by the court or judge upon the hearing of such motion, and depositions taken for the purpose of being read at such hearing, may be read on the final hearing of the cause in which they have been taken: *Provided*, That in all cases in which notice shall be given of an application for an injunction, as provided in section five of this chapter, no motion for the dissolution of such injunction shall be heard or made in vacation.

SEC. 7. Whenever the judge of any district court in this territory shall be absent from this territory, or shall be unable to discharge the duties of his office, any person desiring to apply for a writ of injunction, or to move for the dissolution of an injunction, as provided in this chapter, may apply to either of the justices of the supreme court, in the same manner and with the like effect as if such application was made to the judge of the district court having jurisdiction of the cause.

SEC. 8. In all cases in which an application to dissolve an injunction shall be made to the judge of any district court in vacation, as provided in this chapter, it shall be lawful for such judge to continue such injunction, or to dissolve the same, in the same manner and with the like effect as if the application was made to the court in term-time.

SEC. 9. It shall not be necessary to the granting of any injunction that the complainant's bill be first filed in the court out of which such writ is prayed, but the order of the judge or any court to whom any bill is presented, praying such injunction, may direct that such injunction issue upon the filing of the complainant's bill, with the bond required by the third section.

Prior Statutes Repealed. An act concerning Injunctions. Approved November 5, 1861. Laws 1861, p. 338.

An act to amend an act entitled An act concerning Injunctions. Approved March 3, 1864. Laws 1864, p. 98.

CHAPTER XLIV.

INTEREST.

SECTION
1. Legal rate of interest ten per cent. per annum.
2. In what cases interest is recoverable.
3. Parties may contract in writing for a higher rate of interest than ten per cent.
4. Auditors' warrants and county orders to draw interest from date of presentation, until there be money in treasury to pay same.

SECTION 1. The legal rate of interest on the forbearance or loan of any money, when there is no agreement between the parties, as specified in the third section of this chapter, shall be at the rate of ten per centum per annum.

SEC. 2. Creditors shall be allowed to receive interest, when there is no agreement as to the rate thereof, at the rate of ten per cent. per annum, for all moneys after they become due, on any bond, bill, promissory note or other instrument of writing, on any judgment recovered before any court or magistrate authorized to enter up the same within this territory, from the day of entering up said judgment, until satisfaction of said judgment be made; likewise on money lent, on money due on the settlement of account, from the day of liquidating accounts between the parties and ascertaining the balance due, on money received to the use of another and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay.

SEC. 3. The parties to any bond, bill, promissory note or other instrument of writing, may stipulate therein for the payment of a greater or higher rate of interest than ten per centum per annum, and any such stipulation contained in any such instrument of writing, may be enforced in any court of law or equity in the territory.

SEC. 4. Auditors' warrants, county orders and other like evidences or certificates of indebtedness, shall bear interest at the rate of ten per cent. per annum from the date of the presentation thereof, for payment, at the treasury where the same may be payable, until there is money in the treasury for the payment thereof; and every territorial or county treasurer to whom any such order or warrant is presented for payment, shall indorse thereon the fact and date of such presentation, and subscribe such indorsement with his official signature.

Prior Statutes Repealed. An act to prescribe the rate of Interest. Approved October 24, 1861. Laws 1861, p. 45.

An act to provide for the expenses of Colorado territory. Approved October 31, 1861. Laws 1861, p. 51.

CHAPTER XLV.

IRRIGATION OF LANDS.

SECTION
1. Claim owners on bank, margin or neighborhood of any stream, entitled to use water for irrigation.
2. To right of way through claims of adjoining owners for the purpose of conveying water.
3. Extent of right of way.
4. Where water not sufficient to supply all, probate judge to appoint commissioners to apportion it; Hardscrabble ranch excepted.
5. Right of way for ditch how condemned.
6. Persons in neighborhood of stream may erect wheel, or other machine to raise water; right of way therefor how obtained.
7. Ditch owners to preserve bank of ditch so as not to flood or injure others.
8. This chapter not to impair prior vested rights.
9. Notice required to authorize appointment of commissioners under section four.
10. Ditches crossing highway to be bridged by the owner of ditch.
11. Supervisor to bridge same if owner neglect for three days; owner to pay expenses.
12. How the same shall be collected.

SECTION 1. All persons who claim, own or hold a possessory right or title to any land or parcel of land within the boundary of Colorado territory, as defined in the organic act of said territory, when those claims are on the bank, margin or neighborhood of any stream of water, creek or river, shall be entitled to the use of the water of said stream, creek or river, for the purposes of irrigation, and making said claims available to the full extent of the soil, for agricultural purposes.

SEC. 2. When any person owning claims in such locality, has not sufficient length of area exposed to said stream to obtain a sufficient fall of water to irrigate his land, or that his farm, or land used by him for agricultural purposes, is too far removed from said stream, and that he has no water facilities on those lands, he shall be entitled to a right of way through the farms or tracts of land which lie between him and said stream, or the farms or tracts of land which lie above and below him on said stream, for the purposes hereinbefore stated.

SEC. 3. Such right of way shall extend only to a ditch, dyke or cutting, sufficient for the purpose required.

SEC. 4. In case the volume of water in said stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, then the probate judge of the county shall appoint three commissioners as hereinafter provided, whose duty it shall be to apportion, in a just and equitable proportion, a certain amount of said water upon certain or alternate weekly days to different localities, as they may in their judgment think best for the interest of all parties concerned, and with due regard to the legal rights of all: *Provided*, That this section shall not apply to persons occupying land on what is known as Hardscrabble creek, a tributary of the Arkansas river, but upon said stream the owners of the ranch known as the Hardscrabble ranch, their successors and assigns, shall have the exclusive right to all the water in said Hardscrabble creek, down said stream to the north line of said

Hardscrabble ranch: *Provided*, There is not any more water in said stream, at the above-named line, than would be required to irrigate one hundred and sixty acres of land.

SEC. 5. Upon the refusal of the owners of tracts of land or lands through which said ditch is proposed to run, to allow of its passage through their property, the person or persons desiring to open such ditch may proceed to condemn and take the right of way therefor, under the provisions of section forty-eight of article one of the chapter concerning corporations, in the same manner and with like effect, in all respects, as if such person or persons were a corporation organized under the provisions of that chapter.

SEC. 6. All persons on the margin, brink, neighborhood or precinct of any stream of water, shall have the right and power to place upon the bank of said stream a wheel, or other machine for the purpose of raising water to the level required for the purpose of irrigation, and the right of way shall not be refused by the owner of any tract of land upon which it is required, subject of course, to the like regulations, as required for ditches, and laid down in sections hereinbefore enumerated.

SEC. 7. The owner or owners of any ditch for irrigation or other purposes, shall carefully maintain the embankments thereof, so that the waters of such ditch may not flood or damage the premises of others.

SEC. 8. Nothing in this chapter contained shall be so construed as to impair the prior vested rights of any mill or ditch owner, or other person, to use the waters of any such watercourse.

SEC. 9. The commissioners provided for by section four of this chapter, shall not be appointed until at least six days' previous notice shall have been given to parties in interest, by posting notices of the time and place when and where such appointment will be made, in at least five public places within the region watered by the said stream.

SEC. 10. Any ditch company constructing a ditch, or any individual having ditches for irrigation, or for other purposes, wherever the same be taken across any public highway, or public travelled road, shall put a good substantial bridge, not less than fourteen feet in breadth, over such watercourse where it crosses said road.

SEC. 11. When any such ditch or watercourse shall be constructed across any public travelled road, and not bridged within three days thereafter, it shall be the duty of the supervisor of the road-district to put a bridge over said ditch or watercourse, of the dimensions specified in section first of this chapter, and call on the owner or owners of the ditch to pay the expenses of constructing such bridge.

SEC. 12. If the owner or owners of such ditch refuse to pay the bill of expenses so presented, the supervisor may go before any justice of the peace in the township or precinct, and make oath to the correctness of the bill, and that the owner or owners of the ditch refuse payment, and thereupon such justice of the peace shall issue a summons against such owner or owners, requiring him or them to appear and answer to the complaint of such supervisor, in an action of debt for the amount sworn to be due, such summons to be made returnable, and served, and proceedings to be had thereon as in other cases; and in case judgment shall be given against such owner or owners, the justice shall assess, in addition to the amount sworn to be due as aforesaid, the sum of ten dollars, as damages arising from the delay of such owner or owners, such judgment to be collected as in other cases, and to be a fund in the hands of the supervisor of roads, for the repairs of roads in such precinct or district.

Prior Statutes Repealed. An act to protect and regulate the Irrigation of Lands. Approved November 5, 1861. Laws 1861, p. 67.

An act to amend an act entitled An act to protect and regulate the Irrigation of Lands. Approved February 6, 1866. Laws 1866, p. 64.

An act requiring ditch owners to bridge ditches where they cross public travelled roads. Approved January 8, A. D. 1867.

Local Statutes. An act to regulate Ditches used for farming purposes in the counties of Costilla and Conejos.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That the citizens of the counties of Costilla and Conejos, who are engaged in agricultural pursuits, are hereby authorized and empowered to hold an election on the first Monday of March in each year, for the election of superintendents of *acequias* (ditches,) as follows, to wit: One superintendent for each and every *acequia madre* (main ditch) in the counties aforesaid, to be chosen on said first Monday in March, by those persons who are in occupation of the lands adjoining, for farming purposes.

SEC. 2. The county clerk of each of the aforesaid counties shall give notice of the election to be holden as aforesaid, by posting at least one public notice thereof in each of the election precincts of the said counties respectively, at least ten days before the day of election.

SEC. 3. Any person who shall be guilty of voting, who is not entitled to vote under the provisions of this act, shall be liable to a fine of not less than one dollar, nor more than five dollars, the one half to go to the informant, and the other half to be placed in the hands of the superintendent of *acequias*, to be used in repairing *acequias*.

SEC. 4. The superintendents are empowered to call out persons using water from the *acequias*, respectively, to repair the *acequias* or dams; and any person so using water from the *acequias*, who shall fail to supply his share of work necessary for repairs, shall be liable to a fine of not less than one dollar, nor more than five dollars, said fine to be appropriated to the benefit of the *acequias*.

SEC. 5. That it shall be the duty of the aforesaid superintendents to keep their *acequias* well repaired and in good order, so that an ample supply of water can at all times be had, and it shall be his duty to divide said water in such a manner that each and every one will have the amount of water he is entitled to; and if any of the aforesaid superintendents shall wilfully, or for fee or reward, give to any one more water than he is entitled to, or shall wilfully keep from any one any part of the water he is entitled to, for every such offence he shall be liable to a fine of not over fifty dollars, nor less than five dollars, the half of said fine to go to the informant, and the other half to the use of the *acequia*.

SEC. 6. If any of the aforesaid superintendents shall wilfully neglect their duty in such manner that damage is done, in addition to the damage done, he shall be fined in any sum not exceeding twenty-five dollars; and if any one shall wilfully break or destroy any *acequia* or dam, or shall turn the water into the crop of any one with the intention of damaging the same, he or they, in addition to such damage as may be done, shall be fined in any sum not exceeding fifty dollars; one half of all fines under the provisions of this section to go to the informant, and the other half to the use of the *acequia*.

SEC. 7. The aforesaid superintendents shall receive such compensation as may be agreed on by a majority of those using water from the *acequia* of which he is the superintendent.

SEC. 8. All suits brought under the provisions of this act, shall be before some justice of the peace living in the county in which the offence was committed, and from the decision of said court there shall be no appeal, except suits brought exclusively for damages: *Provided*, That in all cases, a jury to consist of six disinterested persons may be summoned on demand from the defendant.

SEC. 9. Elections held for the election of the aforesaid superintendents, shall be held in each precinct at the place of holding general elections, and in case of vacancy by removal, resignation or other cause, of any of the aforesaid superintendents, it shall be the duty of the justice of the peace living in the precinct nearest the *acequia* in which the vacancy exists, to call an election for the purpose of electing a superintendent to fill said vacancy.

SEC. 10. In all cases where superintendents are found guilty of any accusation under the provisions of this act, he shall be removed from office, and the vacancy filled under the provisions of section nine.

SEC. 11. All money collected under the provisions of this act, shall be placed in the hands of the superintendent of the *acequia* for which it was collected; and it shall be the duty of the aforesaid superintendent to render to any meeting that may be called by those interested in the *acequia* of which he is the superintendent, a true account of all money received by him, the amount expended, and for what purpose, and the amount on hand; and in all cases the majority of said meeting shall have the power of using any money that may be on hand, in such a manner as they deem most beneficial to the *acequia*. In case of removals or resignations, superintendents shall deliver to their successors all money that may be in their possession.

SEC. 12. That public *acequias*, during the farming season, shall have preference over all ditches used for any mills, machinery, or any other ditch that may not be exclusively used for farming purposes.

SEC. 13. That in all cases of litigation under the provisions of this act, the same costs shall be paid and collected, as in like cases under the provisions of the general law.

SEC. 14. All acts and sections and parts of acts conflicting with the provisions of this act, be, and the same are hereby repealed.

SEC. 15. This act shall take effect and be in force from and after its passage.

Approved February 5, 1866. Laws 1866, p. 61.

CHAPTER XLVI.

JAILS.

SECTION
1. Jail to be kept in each county.
2. Grand jury to make inspection of jail at each term of court.
3. Sheriff to keep jail; to keep sexes separate unless married; supply prisoners with meat, bread and drink, and fuel.
4. County commissioners to allow sheriff for keeping prisoners.
5. Where prisoner committed on process required to be returned, sheriff shall retain a copy thereof; evidence of his authority to detain prisoner.

SECTION
6. To retain warrants of commitment.
7. To transfer same to his successor.
8. When no jail in any county, judge of district court may order prisoner committed to jail of next county having a jail.
9. Jail may be used as place of custody of fugitives from justice from another state or territory; compensation.
10. Treatment of juvenile prisoners.
11. When there is no jail in a county, judge, court or magistrate may commit to the nearest safe jail.

SECTION 1. There shall be established and kept in every county by authority of the tribunal transacting county business, at the expense of the county, a jail for the safe-keeping of prisoners lawfully committed.

SEC. 2. The grand jury at each term of the district court shall make personal inspection of the county-jail, as to the sufficiency of the same for the safe-keeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term; and the court shall give this duty in special charge to such grand jury; and it shall be imperative upon the tribunal transacting county business to issue the necessary orders, or cause to be made the necessary repairs, in accordance with the complaint or recommendation of the grand jury.

SEC. 3. The sheriff of the county, by himself or deputy, shall keep the jail, and shall be responsible for the manner in which the same is kept; he shall keep separate rooms for the sexes, except where they are lawfully married; he shall supply bread, meat, drink and fuel, for the prisoners.

SEC. 4. When a prisoner is committed for crime, or in any suit on behalf of the territory, the county commissioner shall allow the sheriff his reasonable charges for supplying such prisoner.

SEC. 5. When a prisoner is confined by virtue of any process directed to the sheriff, and which shall require to be returned to the court whence it issued, such sheriff shall keep a copy of the same, together with his return thereon, which copy duly certified by such sheriff shall be *prima facie* evidence of his right to retain such prisoner in custody.

SEC. 6. All instruments of every kind, or attested copies thereof, by which a prisoner is committed or liberated, shall be regularly indorsed and filed, and kept in a suitable box by such sheriff, or by his deputy acting as jailer.

SEC. 7. Such box, with its contents, shall be delivered to the successor of the officer having charge of the prisoner.

SEC. 8. When there is no sufficient prison in any county wherein any criminal offence shall have been committed, any judge of the district court of such county, upon application of the sheriff, may order any person charged with any criminal offence, and ordered to be committed to prison, to be sent to the jail of the county nearest, having a sufficient jail; and the sheriff of such nearest county, shall on exhibit of the order of such judge, receive and keep in custody in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which such prisoner was sent; and the same sheriff shall upon the order of the district court or judge thereof, redeliver such prisoner when demanded.

SEC. 9. Any county-jail may be used for the safe-keeping of any fugitive from justice from another state or territory, and the jailer shall in this case be entitled to reasonable compensation for the support and custody of such fugitive in custody, to be paid by the officer demanding the custody of the same.

SEC. 10. Juvenile prisoners shall be treated with humanity, and in a manner calculated to promote their reformation. They shall be kept in apartments separate from those containing more experienced and hardened criminals. The visits of parents and friends, who desire to exert a moral influence over them, shall at all reasonable times be permitted.

SEC. 11. Where in pursuance of any law of this territory, any court, judge or magistrate is required to commit any prisoner to the common-jail of any county, either upon process civil or criminal, and there is or shall be no jail within such county, in every such case such court, judge or magistrate shall commit such prisoner to the nearest safe jail in any other county.

Prior Statutes Repealed. An act concerning County-Jails. Approved November 6, 1861. Laws 1861, p. 108.

An act relative to the Commitment of Prisoners. Approved November 6, 1861. Laws 1831, p. 134.

CHAPTER XLVII.

JOINT RIGHTS AND OBLIGATIONS.

SECTION
1. If partition be not made between joint-tenants, the right of those who die first not to accrue to the survivors.

SECTION
2. Joint-tenants may have actions against each other.
3. Joint obligations and covenants taken to be joint and several.

SECTION 1. If partition be not made between joint-tenants, the parts of those who die first shall not accrue to the survivor, or survivors, but descend or pass by devise, and shall be subject to debts, charges, &c., or transmissible to executors or administrators, and be considered to every intent and purpose in the same view as if such deceased joint-tenants had been tenants in common.

SEC. 2. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint-tenancy, tenancy in common, or coparcenary, the party aggrieved shall have his action of trespass or trover, for the injury, in the same manner as he would have if such joint-tenancy, tenancy in common, or coparcenary did not exist.

SEC. 3. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

Prior Statutes Repealed. An act concerning Joint Rights and Obligations. Approved Novembember 6, 1861. Laws 1861, p. 113.

CHAPTER XLVIII.

JUDGMENTS AND EXECUTIONS.

SECTION

1. The lands and tenements, goods and chattels of defendant in any judgment liable to sale on execution; judgment a lien on lands from last day of term, provided execution issue within one year; after seven years judgment not a lien as against *bona fide* purchasers or encumbrancers; if execution or sale restrained, time thereof no part of the seven years.
2. Remedy under judgment not delayed or suspended by death of debtor or nonage of heirs; no execution to issue until a year from death of debtor; lien not to be impaired by statutory preferences.
3. Holders of certificate of purchase of lands from the United States within this chapter.
4. *Interest recoverable on judgments.*
5. Execution may issue to any county.
6. Nothing herein to prevent issuing execution against the body of a defendant, when judgment recovered for a tort or trespass.
7. No execution issuable against body or estate of heir or personal representatives, unless he hath made his estate liable by false pleading or otherwise.
8. Executions to be returnable ninety days from date; not to bind personal property until delivered to officer to execute; officer to indorse day and hour of receipt of writ.
9. Plaintiff may elect whereon to levy execution; land whereon defendant resides to be last taken.
10. Property to be sold in parcels if susceptible of division.
11. Sale of lands to be at public vendue; time thereof; previous notice to be given for twenty days; penalty for sale without notice, or in another manner than required; irregularity not to invalidate sale, unless purchaser had notice of the irregularity.
12. Officer making sale of lands to give certificate of purchase; to file duplicate; certificate or copy thereof to be evidence.
13. Defendant may redeem within six months after sale, by paying to purchaser or sheriff amount of purchase money with interest.
14. Creditor or defendant may redeem after six months and within nine months; proceedings in such case; sheriff to advertise and sell on execution of redeeming creditor.
15. If no greater amount bid than amount of redemption money, purchaser entitled to deed; if a greater amount bid, purchaser entitled to certificate, and if no redemption in sixty days thereafter, a deed.
16. Land may be redeemed in the same parcels in which it was sold.
17. Officer receiving redemption not allowed a commission thereon; to receive commission on excess over redemption for which it is sold; duplicate certificate of purchase to be filed in county where land situate.
18. Certificate of purchase assignable.
19. Form of deed.
20. Provisions of deed in case of assignment of certificate of purchase.
21. Deed evidence of what; not to be construed as containing a covenant by sheriff.
22. Mortgage duly executed and recorded may be foreclosed by *scire facias;* proceedings thereon; judgment not to bind other property.
23. Lands sold upon decree of foreclosure of mortgage, redeemable in the same manner as lands sold on execution at law, by defendant and his judgment creditors.
24. Writ attachment or execution issued from one county and directed to another and levied, sheriff to file certificate of such levy; levy of no effect as to creditors and *bona fide* purchasers, without notice, until duplicate filed with recorder of county.
25. Levy of writ of attachment not to have effect as against creditors and *bona fide* purchasers, without notice until certificate filed with recorder of county.
26. Certificate to be recorded; fees to be taxed as costs.
27. Form of certificate of levy.
28. On redemption of lands, officer to give certificate thereof; to be recorded.
29. Goods and chattels not to be sold except upon ten days' notice.
30. Defendant may retain goods levied upon by giving forthcoming bond.
31. If property not forthcoming according to condition of bond, sheriff may levy anew: if sufficiency of defendant's property not found *may levy on property of the security in* bond; no other forthcoming bond allowed.
32. Wearing apparel of debtor exempt from execution attachment or distress for rent.
33. Certain personal property of debtor, being head of family, exempt; what exempt in favor of debtor, not the head of a family.
34. Head of family dying or deserting same, family entitled to exemption above.
35. Officer seizing exempt property, liable for triple value.
36. This act to apply to judgments by justices only so far as relates to personal property.
37. Execution to issue against lands of deceased debtor; provided executor or administrator have three months' notice in writing of existence of judgment; execution not to issue for one year after death of debtor.
38. On return of no property found, plaintiff may have garnishee process against any debtor of defendant; proceedings.
39. Garnishee process not to be quashed for any informality; affidavit and summons may be amended.
40. On death of plaintiff, executor may proceed to collect judgment how.
41. Lien not suspended by death of plaintiff.
42. Executor or administrator may purchase lands at sale; same may be sold on order of probate court.
43. Debtor removing property from territory not entitled to the exemptions above, except as to beds, bedding, and wearing apparel of himself and family.
44. Garnishee process not to issue from court of record for less than twenty dollars.
45. Coin and bank-bills or other currency may be taken on execution, and shall be receipted as so much money.
46. Shares in corporate companies may be levied upon under execution or attachment.
47. Certain officers of company on demand to certify to the officer the number of shares of stock owned by defendant.
48. Levy how made; certificate to be given by officer to president, etc., of company.
49. Shares to be sold as personal property.
50. Certificate of sale given to purchaser; duplicate thereof to be given to president of company, who shall thereupon assign stocks to purchaser on books of company.
51. Purchaser entitled to all the rights of defendant, as a stockholder.
52. Every interest in lands legal or equitable, including possessory rights to public lands, liable to sale on execution; this not to include homestead rights.
53. Judgments and decrees of any miners', people's or other courts, which have been legalized by act of the legislature, may be revived by *scire facias.*
54. Judgment may be rendered by justice of the peace upon transcript of any judgment certified by the officer before whom same was rendered, and not exceeding one hundred dollars in amount.

SECTION
55. Judgments of people's, miners' and Kansas courts, mining clubs and claim clubs, where both parties appeared or had notice, and all sales, etc., thereon, legalized and confirmed.
56. The foregoing section to apply to sales, etc., made prior to August 15, 1862.
57. Every householder, being head of family, entitled to homestead for debts contracted after February 1, 1868; value.
58. Debtor must cause his homestead to be so designated of record.
59. Homestead exempt only while occupied as such by the debtor or his family.

SECTION
60. Widow, husband and minor children of decedent leaving a homestead, entitled thereto.
61. Of what homestead may consist.
62. Householder may mortgage homestead; mortgage not binding on wife unless she execute and acknowledge the same separate from her husband.
63. How creditor may subject homestead exceeding $2,000 in value to execution; $2,000 to be paid to debtor free of all costs.
64. In case of sale of homestead, debtor may acquire another with proceeds; prior judgments not to be a lien on homestead in hands of *bona fide* purchasers.

SECTION 1. All and singular the goods and chattels,[1] lands, tenements, and real estate of every person against whom any judgment shall be obtained, in any court of record, either at law or in equity, for any debt, damages, costs, or any other sum of money, shall be liable to be sold on execution, to be issued upon such judgment,[2] and the said judgment shall be a lien[3] on such lands, tenements, and real estate, from the last day of the term of the court in which the same may be rendered, for the period of seven years: *Provided*, That execution be issued at any time within one year, on such judgment; and from and after the said seven years the same shall cease to be a lien on any real estate, as against *bona fide* purchasers or subsequent encumbrancer by mortgage, judgment, or otherwise: *Provided*, That in case the party in whose favor any such judgment shall have been entered shall be restrained by injunction out of chancery, or order of any judge or court, either from issuing execution or selling thereon, the time which he shall be so restrained shall not be deemed or considered as any part of the said seven years. The term real estate in this section, shall be construed to include all interest of the defendant, or any person to his use, held or claimed by virtue of any deed, bond, covenant, or otherwise, for a conveyance, or as mortgagor of lands, in fee for life, or for years.[4]

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(1) The mortgagor of chattels who retains the possession, has an interest therein which may be seized and sold upon execution. *Merritt* v. *Niles*, 25 Ill. 282. *Bailey* v. *Burton*, 8 Wend. 347.

Otherwise if possession is delivered to the mortgagee. *Prior* v. *White*, 12 Ill. 360.

(2) A municipal corporation is not within this section. *City of Chicago* v. *Halsey*, 25. Ill. 595.

(3) The lien of a judgment in the district court extends only to lands within the jurisdiction of the court, to wit, the county within and for which it is held. *Bustard* v. *Morrison*, 1 Scam. 235. *Kirk* v. *Vonberg*, 34 Ill. 44.

That of the judgment of the supreme court extends throughout the territory. *Durham* v. *Heaton*, 28 Ill. 273.

An appeal does not vacate the lien. *Curtiss* v. *Root*, 28 Ill. 376.

Prior sale under a junior judgment does not affect the lien of the senior judgment. *Kirk* v. *Vonberg*, 34 Ill. 446.

A mortgage given to secure the purchase money of lands which are simultaneously conveyed by mortgagee to mortgagor, will take precedence of a prior judgment against mortgagor. *Curtiss* v. *Root*, 20 Ill. 53.

(4) A leasehold interest; the equity of redemption of mortgagor; a mere possession without title; and a vested remainder, are all held to be within the statute. *La Salle Co. Manuf. Co.* v. *Ottawa*, 16 Ill. 418. *Curtiss* v. *Root*, 20 Ill. 53. *Sweetzer* v. *Skiles*, 3 Gilm. 533. *Thomas* v. *Bowman*, 30 Ill. 85. *Hempsted* v. *Dickson*, 20 Ill. 195.

So also is an equity by a writing unrecorded. *Niantic Bank* v. *Dennis*, 37 Ill. 381.

SEC. 2. When any judgment shall have become a lien, as aforesaid, and the defendant happen to die before execution shall have been issued thereon, the remedy of the person in whose favor the said judgment shall have been rendered shall not be delayed or suspended by reason of the nonage of any heir, or heirs, of such defendant; but no execution shall issue upon such judgment until the expiration of one year after the death of such defendant, nor shall any law of this territory which gives no preference to the claims of a creditor of a deceased debtor, be so construed as to impair or affect the lien of any judgment as aforesaid.[5]

SEC. 3. The legal holder or holders, by record, of any certificate of purchase of lands, of the United States, shall be deemed to be within the true intent and meaning of this chapter.

SEC. 4. In all executions, to be issued upon judgments recovered upon contracts expressed or implied, it shall be lawful to direct the collection of interest on the said judgment from the time of recovering the same until paid, at the rate of ten per cent. per annum.

SEC. 5. It shall be lawful for the party in whose favor any judgment as aforesaid may be obtained, to have execution, in the usual form, directed to any county in this territory, against the goods, chattels, lands and tenements, of such party defendant, or upon his body, when the same is authorized by law.

SEC. 6. Nothing herein shall restrain or prevent any execution from being issued against the body of any defendant, where the judgment shall have been obtained for a tort or trespass, committed by such defendant.

SEC. 7. No execution shall be issued against the body, or against the goods and chattels, lands and tenements, of any heir, executor or administrator, unless such person shall have made his estate liable to the same debt, by false pleading or otherwise.

SEC. 8. All executions shall be made returnable ninety days after date, and no writ of execution shall bind the property of the goods and chattels of any person against whom such writ shall be issued, until such writ shall be delivered to the sheriff, or other officer, to be executed; and for the better manifestation of the said time, the sheriff or other officer shall, on the receipt of every such writ, indorse upon the back thereof, the

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The residuary interest of the grantor in a deed of trust of lands, is subject to the lien of a judgment subsequently recorded; but if the judgment creditor permit a sale to be made under the power, the judgment is no lien upon the surplus of the proceeds. *Pahlman* v. *Shumway*, 24 Ill. 129.

(5) If the lien of the judgment be suffered to expire, by failure to issue execution within a year and in the meantime the debtor die, the revival of the judgment by *scire facias* will not revive the lien, as against the heirs; the judgment in such case can only be paid in due course of administration. *Turney* v. *Gates*, 12 Ill. 142. *Turney* v. *Young*, 22 Ill. 255. And see *Scammon* v. *Swartwout*, 35 Ill. 345.

hour, day of the month, and year, when he received the same.[6]

SEC. 9. The plaintiff in execution, may elect on what property he will have the same levied, except the land on which the defendant resides,[7] which shall be last taken in execution, excepting and reserving, however, to the defendant in execution such property as is, or may be, by law exempted from execution.

SEC. 10. When any property, real or personal, shall be taken in execution, if such property is susceptible to division, it shall be sold in such quantities as may be necessary to satisfy such execution and costs.[8]

SEC. 11. No lands or tenements shall be sold, by virtue of any execution aforesaid, unless such sale be at public vendue, and between the hours of nine in the morning, and the setting of the sun the same day, nor unless the time and place of holding such sale shall have been previously advertised, for the space of twenty days, by publishing notices of the time and place thereof in some daily or weekly newspaper printed and published in the county where such lands and tenements are situate; or if there be no such newspaper printed in the county, by posting such notices, printed or written, or partly printed and partly written, in three of the most public places in the county where the lands may be situated, specifying the names of the plaintiff and defendant in the execution; and in all such notices, the lands or tenements to be sold shall be described, with reasonable certainty, by setting forth their number, or by some other appropriate description; and if any sheriff or other officer shall sell any lands or tenements, by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice, the sheriff or other officer so offending, shall, for every offence, forfeit and pay the sum of fifty dollars, to be recovered, with costs of suit, in any court of record in this territory, by the person whose lands may be advertised and sold: *Provided, however*, That no such offence, nor any irregularity on the part of the sheriff or other officer having the exe-

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(6) The delivery of an execution to the sheriff creates a lien upon the personal property of the defendant. *Garner* v. *Willis*, Breese, 290.

But an execution issued upon a judgment which was obtained without service of process, creates no lien. *White* v. *Jones*, 38 Ill. 164.

The death of the defendant subsequent to the delivery of the execution, and before levy, does not abate the lien; the officer may notwithstanding proceed to levy and satisfaction. *Dodge Admr.* v. *Mack*, 22 Ill. 93.

Return of an execution cannot be compelled in less than ninety days from the date thereof; but if the sheriff assume the responsibility of a return of *nulla bona*, at an earlier day, such return can be questioned only in an action for a false return. *Bowen* v. *Parkhurst*, 24 Ill. 258.

(7) See *Thorpe* v. *Wheeler*, 23 Ill. 546. *Bingham* v. *Maxey*, 15 Ill. 290.

(8) Where lands are taken in execution, it is the duty of the officer to sell in such quantities as will produce the largest price, with the least injury to the debtor. *McLean County Bank* v. *Flagg*, 31 Ill. 290. And see *Phelps* v. *Conover*, 25 Ill. 313. *Meeker* v. *Evans*, 25 Ill. 323. *Garrett* v. *Moss*, 20 Ill. 549. *Day* v. *Graham*, 1 Gilm. 435. *Greenup* v. *Stoker*, 12 Ill. 25. *Ross* v. *Mead*, 5 Gilm. 173.

ecution, shall be deemed to affect the validity of any sale made under it, unless it shall be made to appear that the purchaser had notice of such irregularity.

SEC. 12. Whenever any lands or tenements shall be sold, by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing a deed of the premises sold, to give to the purchaser or purchasers of such lands or tenements, a certificate in writing, describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands, or tenements, unless the same shall be redeemed, as is provided in this chapter; and such sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county, a duplicate of such certificate signed by him; and such certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.[9]

SEC. 13. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold by virtue of any execution, within six months from such sale, to redeem such lands or tenements,[10] by paying to the purchaser thereof, his executors, administrators, or assigns, or the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per cent. from the time of such sale; and on such sum being paid as aforesaid, the said sale and the certificate thereupon granted shall be null and void.

SEC. 14. After the expiration of six months,[11] and at any time before the expiration of nine months, from the sale of any lands or tenements, under the provisions of the preceding sections hereof, it shall be lawful for any judgment creditor[12] to redeem the same in the manner following: such judgment creditor shall sue out an execution upon his judgment, and place the same in the hands of the proper officer to execute the

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(9) If the certificate of purchase issue to a different person than the one who by the sheriff's return is shown to be the purchaser, it is void. *Dickerman* v. *Burgess*, 20 Ill. 266.

The certificate of purchase when filed with the recorder, is notice to all subsequent purchasers. *McClure* v. *Englehart*, 17 Ill. 47. *Reichart* v. *McClure*, 23 Ill. 516.

(10) The assignee of the debtor must redeem within the period allowed to the debtor himself, or his right is lost. *Ross* v. *Mead*, 5 Gilm. 173. *Sweezy* v. *Chandler*, 11 Ill. 448. *McLagan* v. *Brown*, 11 Ill. 525.

The debtor's right of redemption cannot be taken away by a decree of any court. *DeWolf* v. *Haydn*, 24 Ill. 525.

Nor can it be sold upon execution. *Merry* v. *Bostwick*, 13 Ill. 398. *Watson* v. *Ressig*, 24 Ill. 281.

(11) The right of the judgment creditor to redeem does not attach until the period allowed to the judgment debtor in which to redeem has expired. *Armsby* v. *The People*, 20 Ill. 155.

(12) The assignee of a judgment is a judgment creditor within the meaning of the statute. *Sweezy* v. *Chandler*, 11 Ill. 445.

same,[13] and thereupon the said officer shall indorse upon the back of said execution, a levy upon the land or tenements which said judgment creditor may wish to redeem; and said judgment creditor shall pay to said officer[14] in whose hands he shall have placed his execution, as aforesaid, the amount of money for which said premises shall have been sold, with ten per cent. per annum interest thereon from the date of such sale, for the use of the purchaser thereof, his executors, administrators or assigns, upon payment of which said officer shall file in the recorder's office of the county in which said lands are situated, a certificate of the redemption thereof, by said judgment creditor, under such execution, and shall advertise and offer the same for sale, under and by virtue of said execution, in the same manner as lands are required to be advertised and exposed to sale on execution in other cases.[15]

SEC. 15. Any judgment creditor, having so redeemed such lands, shall be considered as having bid at such sale the amount of said redemption money, so paid by him, and interest thereon from the date of such redemption to the day of sale; and if no bid greater than said amount shall be offered, the lands shall be struck off and sold to such judgment creditor or creditors, and a deed thereof shall forthwith be executed by such officer to such creditor or creditors, and no other redemption shall be allowed; but if another and higher bid shall be made therefor,

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(13) If the creditor intending to redeem fail to deliver to the sheriff, together with the redemption money his execution, the omission is fatal; equity cannot afford relief. *Stone* v. *Gardner*, 20 Ill. 304.

(14) Payment of the redemption money may be made to the sheriff or his deputy, or to his successor, or to the purchaser, or to the sheriff who made the sale, though his office has since expired. *Stone* v. *Gardner*, 20 Ill. 304. *Dennis* v. *Robertson*, 20 Ill. 313. *Elkin* v. *The People*, 3 Scam. 208. *McClusky* v. *McNeeley*, 3 Gilm. 579.

But a payment to the clerk of the court will not suffice. *Stone* v. *Gardner*, 20 Ill. 304.

(15) It is not necessary, to entitle the judgment creditor to redeem, that his judgment should be a lien upon the debtor's right of redemption. *Sweezy* v. *Chandler*, 11 Ill. 445.

Nor that it should be recovered before the expiration of the period allowed to the debtor in which to redeem. *Phillips* v. *DeMoss*, 14 Ill. 411.

And it will suffice, though the judgment be confessed for the express purpose of affecting a redemption after the debtor's right has expired. *Ibid.*

Though it might be otherwise if confessed fraudulently, for a debt not due. *Ibid.*

And even where made upon transcript from the record of a justice's judgment; where it appears that the return of *nulla bona* upon the execution issued by the justice was false, and was known to be so, to the creditor, this will not vitiate the redemption. *Ibid.*

Two judgments were recovered, one before, and the other subsequent to the recording of a mortgage, of which the creditor in the first judgment had notice; sale of the mortgaged lands under the first judgment, and redemption, under the second judgment, from this sale; upon bill in equity by the mortgagee: *Held* that the mortgage should have preference to the title of the purchaser (who was the redeeming creditor) at the sale under the second judgment. *Williams* v. *Tatnall*, 29 Ill. 565.

Mortgaged premises were sold in May, 1861, under a decree given upon a junior mortgage; and in June, 1861, under a decree upon the senior mortgage; the mortgagee in the junior mortgage redeemed from the sale under the senior mortgage, as grantee of the mortgagor: *Held* that a judgment creditor of the mortgagor, by judgment junior to both mortgages, could redeem from the sale under the second mortgage, only by payment of the amount bid at that sale, and the amount paid to redeem from the sale under the senior mortgage. *Flachs* v. *Kelly*, 30 Ill. 470.

Upon redemption made after the decease of the judgment debtor, the estate vests in the heirs of the decedent. *Turney* v. *Young*, 22 Ill. 255.

and the said lands sold for more than the amount of said redemption money and interest, as last aforesaid, the excess, over and above the amount of the same, shall be applied as a credit on the execution under which the redemption shall have been made, and a certificate of purchase shall be executed to the new purchaser, in the manner hereinbefore prescribed, for a deed of said land so sold, within sixty days from the date of such sale, unless the same shall be redeemed in the meantime, in the manner herein prescribed, by some other judgment creditor; and if such lands shall be redeemed from said second purchaser, the same shall be done in the same manner, and upon the same terms, and the officer shall proceed in the same mode to offer the said lands for sale as hereinbefore required in the case of the first redemption; and such lands may be successively redeemed, within every period of sixty days, as long as there shall be a judgment creditor disposed to redeem the same, on the terms, and in the manner aforesaid; and after the lapse of any period of sixty days without redemption, it shall be the duty of the officer who last sold such lands on the execution under which the same shall have been last redeemed, or his successor in office, to execute a deed for the lands so sold, to the last purchaser, in like manner as other deeds for lands sold on execution are made.

SEC. 16. Any judgment creditor or creditors may redeem the whole, or any part or portion, of the lands or tenements previously sold upon execution: *Provided*, Such redemption shall be made in the like distinct quantities or parcels in which the same were sold.[16]

SEC. 17. No commission upon the amount of the redemption money paid, in any case, shall be allowed to the officer receiving the same, but the usual commission shall be allowed the officer selling said premises, on the excess made over and above the amount of said redemption money and interest. The duplicate copy of the certificate of purchase required in the twelfth section hereof, shall be filed in the office of the recorder of the county in which the lands so sold under execution are situated.

SEC. 18. Every certificate which shall be given by any officer to any purchaser, under the provisions of this chapter, shall be assignable by indorsement thereon, under the hand of such purchaser or purchasers, his, her, or their heirs, executors, administrators, or assigns; and every person to whom the same shall be so assigned, shall be entitled to the same benefits therefrom, in every respect, that the person therein named would have been, if the same had not been assigned; and in case the lands

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(16) See *Robertson* v. *Dennis*, 20 Ill. 313. *Hawkins* v. *Vineyard*, 14 Ill. 26.

mentioned in such certificate, shall not be redeemed in pursuance of law, shall be entitled to a deed thereof.

SEC. 19. The deed, to be executed by the officer to the purchaser, under the provisions of this chapter, shall contain a statement of the judgment upon which the lands therein described were sold, and of the date of the execution, and may be in the following form: WHEREAS, A. B. did, at the —— term of the district court for the county of —— (as the case may be), recover a judgment against C. D., for the sum of —— dollars and —— cents, and costs of suit; upon which judgment an execution was issued, dated on the —— day of ——, A. D. 18—, directed to —— to execute; and by virtue of said execution, the said —— levied upon the lands hereinafter described, and the same were struck off and sold to ——, he being the highest and best bidder therefor, and the time and place of sale thereof having been duly advertised according to law: *Now therefore*, Know all, by this deed, that I, ——, of the said county of ——, in consideration of the premises, have granted, bargained and sold, and do hereby convey, to the said ——, his heirs and assigns, the following described tract or tracts of land, (describe the lands), to have and hold the said described premises, with all the appurtenances thereunto belonging, to the said ——, his heirs and assigns, forever. Witness my hand and seal, this —— day of ——, A. D. one thousand eight hundred and ——.

———— [L. S.]

SEC. 20. If the purchaser shall have assigned his certificate of purchase, then there may be inserted after the word "law," in the foregoing form, in substance as follows: "and the said ——, having duly assigned his certificate of purchase to" (as the case may be).[17]

SEC. 21. Any deed so executed shall be evidence that the provisions of the law in relation to sales of land upon execution were complied with, until the contrary shall be shown, and such deed shall be considered as conveying to the grantee, therein named, all the title, estate and interest of the defendant, or defendants, in the execution therein named, in and to the lands thereby conveyed, of whatsoever nature the same may be, but which deed shall not be construed to contain any covenant upon the part of the officer executing the same.[18]

SEC. 22. If default be made in the payment of any sum of money secured by mortgage on lands and tenements, duly exe-

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(17) If the sheriff execute a conveyance to the assignee in a defective assignment, the judgment debtor cannot object. *McClure* v. *Englehart*, 17 Ill. 47. *Voorhees* v. *The Bank of the United States*, 10 Peters, 478.

(18) The deed must conform in its recitals to the sheriff's return and the certificate of purchase. *Dickerman* v. *Burgess*, 20 Ill. 266. *Johnson* v. *Adelman*, 35 Ill. 281.

So that the judgment and execution under which the sale was made are identified, a misrecital in the deed will not vitiate. *Loomis* v. *Riley*, 24 Ill. 309. *Phillips* v. *Coffey*, 17 Ill. 154.

cuted and recorded, and if the payment be by instalments, and the last shall have become due, it shall be lawful for the mortgagee, his executors or administrators, to sue out a writ of *scire facias* from the clerk's office of the district court of the county in which the said mortgaged premises may be situated, or any part thereof, directed to the sheriff, or other proper officer, of such county, requiring him to make known to the mortgagor, or if he be dead, to his heirs, executors, or administrators, to show cause, if any they have, why judgment should not be rendered for such sum of money as may be due by virtue of said mortgage; and upon the appearance of the party named as a defendant in said suit of *scire facias*, the court may proceed to judgment, as in other cases; but if the said *scire facias* be returned *nihil*, or that the defendant is not found, an *alias scire facias* may be issued; and if it be returned as aforesaid, or if the defendant appear and plead, or make default, the court may proceed to give judgment, with costs, for such sum as may be due by said mortgagor, or appear to be due, by the pleadings, or after the defence, if any be made, and also that said mortgaged premises be sold to satisfy such judgment, and may award or direct a special writ of *fieri facias* for that purpose, to the county or counties in which said mortgaged premises may be situate, and on which the like proceedings may be had, as in other cases of execution levied upon real estate: *Provided however*, That the judgment aforesaid shall create no lien on any other lands or tenements than the mortgaged premises, nor shall any other real or personal property of the mortgagor, be liable to satisfy the same; but nothing herein contained shall be so construed as to affect any collateral security given by the mortgagor for the payment of the same sum of money, or any part thereof, secured by the mortgage deed.[19]

SEC. 23. In all cases where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors or administrators, to redeem the same in

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(19) The remedy afforded by this statute extends only to a mortgage given to secure the payment of money. *McCumber* v. *Gilman*, 13 Ill. 543.

The proceeding is a proceeding at law; subsequent purchasers need not be made parties. *Chickering* v. *Failes*, 26 Ill. 517.

Two returns of not found are sufficient to give the court jurisdiction of the defendant's person. *Ibid.*

The *scire facias* is both process and declaration, and must contain every averment material to a sufficient declaration. *Day* v. *Cushman*, 1 Scam. 475. *Osgood* v. *Stevens*, 25 Ill. 89.

Exceptions may be taken to it by demurrer. *Marshall* v. *Maury*, 1 Scam. 232.

No defence can be interposed to the writ, except such as proceed upon the ground that the mortgage never was a valid lien, or has been discharged or released. *Carpenter* v. *Moers*, 26 Ill. 164. *White* v. *Watkins*, 23 Ill. 480. *Woodbury* v. *Manlove*, 14 Ill. 216. *Hall* v. *Byrne*, 1 Scam. 140.

The judgment upon the *sci. fa.* is *in rem*, and not *in personam*. *Marshall* v. *Maury*, 1 Scam. 232. *State Bank* v. *Wilson*, 4 Gilm. 57. *Osgood* v. *Stevens*, 25 Ill. 89.

For a precedent for the writ of *scire facias* under this section, see *Woodbury* v. *Manlove*, 14 Ill. 216. Approved in *Osgood* v. *Stevens*.

the manner prescribed in this chapter for the redemption of lands sold by virtue of executions issued upon judgments at common-law; and judgment creditors may redeem lands sold under any such decree in the same manner as is prescribed for the redemption of lands in like manner sold upon executions issued upon judgments at common-law.

SEC. 24. When a writ of attachment, or a writ of execution is issued from the district court of one county, to any sheriff or other officer of another county, and levied upon any real estate in such county, it shall be the duty of the officer making such levy, to make a certificate thereof, and file the same in the recorder's office of the county where such real estate is situated; and until the filing of such certificate, such levy shall not take effect as to creditors or *bona fide* purchasers without notice.[20]

SEC. 25. When a writ of attachment is levied upon any real estate, in any case, it shall be the duty of the officer making the levy, to file a certificate of such fact with the recorder of the county where such land is situate; and from and after the filing of the same, such levy shall take effect, as to creditors and *bona fide* purchasers without notice, and not before.[21]

SEC. 26. It shall be the duty of the recorder of the proper county, to file and record the certificates mentioned in the foregoing sections, in a book to be kept for that purpose, for which he shall be entitled to the same fees as for recording other papers, to be paid by the plaintiff in such execution or attachment, and be taxed, and collected by the sheriff, as other costs.

SEC. 27. Such certificate may be in substance as follows:

TERRITORY OF COLORADO, } ss.
——— County, }

I do hereby certify that by virtue of a certain writ of —— to me directed from the district court of —— county, in favor

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(20) The title under the levy of an execution of which no certificate is recorded, followed by a sale, a certificate whereof *is* filed, as required by the twelfth section, relates to the date of the levy, and is superior to the title acquired by deed executed and recorded subsequent to the filing of the certificate of sale. *McClure* v. *Englehardt*, 17 Ill. 47.

The levy, upon lands, of an execution from another county, creates a lien without the filing of any certificate; and if a sale follow, and a certificate thereof be filed, the title of the purchaser will relate to the date of the levy, except as against those whose rights accrue in the meantime. *Reichardt* v. *McClure*, 23 Ill. 516.

(21) Title acquired under a proceeding by attachment relates to the recording of a certificate of levy. *Martin* v. *Dorydon*, 1 Gilm. 205.

The word "creditor" in this section is construed to mean one who without actual or constructive notice of the prior encumbrance, institutes such proceedings as affect a lien upon the premises. *Ibid.*

A deed recorded after the levy of an attachment, but before the certificate of levy is recorded, will take precedence of such attachment. *Gaty* v. *Pittman*, 11 Ill. 21.

Lands were conveyed in fraud of the creditors of the grantor; subsequent to the recording of this fraudulent conveyance, the same lands were attached as the estate of the grantor, and certificate of the attachment was duly filed, in pursuance of this section; after this levy, and after the filing of this certificate, the fraudulent grantee conveyed them to an innocent third person, for a valuable consideration: *Held* that such purchaser took the lands subject to the attachment. *Brown* v. *Niles*, 16 Ill. 385.

of —— against —— dated —— day of —— 18—, I did on this —— day of —— 18—, levy upon the following real estate, (describe it).

A. B., sheriff (or coroner) of —— county.

SEC. 28. In all cases of redemption of lands from sale, had under any attachment, judgment, order or decree, or proceeding thereunder, it shall be the duty of the purchaser, sheriff, master in chancery, or other officer or person, from whom said redemption takes place, to make out an instrument in writing, under his hand and seal, evidencing said redemption, which shall be recorded in the recorder's office of the proper county, in manner as other writings, affecting the title to real estate, are filed and recorded; and which recording shall be paid for by the party redeeming.

SEC. 29. No goods or chattels shall be sold by virtue of any execution unless previous notice of such sale shall have been given, for at least ten days successively, in the same manner as required in the sale of real estate upon execution.

SEC. 30. Whenever a sheriff or other officer shall have levied an execution, issued out of any court of record, upon the personal property of a defendant, or shall be about to make such levy, and the defendant be desirous of retaining the same in his possession, such sheriff shall take a bond from such defendant, with security, that the property shall be forthcoming or delivered at such time and place as shall be named in the condition, and that the same shall not be disposed of nor injured; and a bond so taken, shall not be considered void, as taken by color of office.[22]

SEC. 31. Where bonds shall be taken by a sheriff, for the forthcoming and delivery of property, and the defendant or his security shall not return the property named in the said bond conformably to the condition thereof, the officer having such execution may proceed to execute the same in the same manner as if no levy had been made; and in case the defendant's property, or a sufficiency thereof, cannot be found, the officer may proceed to levy on so much of the property of the security in the delivery bond as will make the amount called for in such bond, and the property which may be so taken may be sold, by giving notice thereof, as prescribed in section thirty of this chapter, and no future delivery bond shall be allowed.

SEC. 32. The necessary wearing apparel of every person shall be exempt from execution, writ of attachment, and distress for rent.

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(22) The giving and acceptance of a forthcoming bond does not discharge the chattels levied upon, nor any others, from the lien of the execution. *Brush* v. *Seguin*, 24 Ill. 256.

In such case the levy is not a satisfaction, so as to bar further proceedings. *Martin* v. *Charters*, 27 Ill. 294.

SEC. 33. The following property, when owned by any person being the head of a family and residing with the same, shall be exempt from levy and sale upon any execution or writ of attachment, or distress for rent; and such articles of property shall continue exempt while the family of such person are removing from one place of residence to another within this territory.

First, Family pictures, school-books, and library. *Second*, A seat or pew in any house or place of public worship. *Third*, The sites of burial of the dead. *Fourth*, All wearing apparel of the debtor and his family; all beds, bedsteads and bedding, kept and used for the debtor and his family; all stoves and appendages, kept for the use of the debtor and his family; all cooking utensils; and all the household furniture not herein enumerated, not exceeding one hundred dollars in value. *Fifth*, The provisions for the debtor and his family, necessary for six months, either provided or growing, or both; and fuel necessary for six months. *Sixth*, The tools and implements, or stock in trade of any mechanic, miner, or other person, used and kept for the purpose of carrying on his trade or business not exceeding two hundred dollars in value. *Seventh*, The library and implements of any professional man not exceeding three hundred dollars. *Eighth*, Working animals to the value of two hundred dollars. *Ninth*, One cow and calf, ten sheep, and the necessary food for all the animals herein mentioned, for six months, provided or growing, or both; also one farm wagon, cart or dray, one plough, one harrow, and other farming implements, including harness and tackle for team, not exceeding fifty dollars in value: *Provided*, That nothing in this chapter shall be so construed, as to exempt any property of any debtor from sale for the payment of any taxes whatever, legally assessed: *And provided further*, That no article of property above-mentioned shall be exempt from attachment, or sale on execution for the purchase money for said article of property: *And provided also*, *further*, That the tools, implements, working animals, books and stock in trade, not exceeding three hundred dollars in value, of any mechanic, miner or other person not being the head of a family, used and kept for the purpose of carrying on his trade and business, shall be exempt from levy and sale on any execution or writ of attachment, while such person is a *bona fide* resident of this territory.

SEC. 34. Whenever in any case the head of a family shall die, desert, or cease to reside with the same, the said family shall be entitled to, and receive all the benefit and privileges, which are in this chapter conferred upon the head of a family residing with the same.

SEC. 35. If any officer or other person, by virtue of any execution or other process, or by any right of distress, shall take or seize any of the articles of property hereinbefore exempted from levy and sale, such officer or person shall be liable to the party injured, for three times the value of the property illegally taken or seized, to be recovered by action of trespass, with costs of suit.

SEC. 36. Nothing in this chapter shall apply to judgments rendered and executions issued, by justices of the peace, excepting such as relate to executions levied upon personal property.

SEC. 37. Whenever a judgment is obtained, in any court of record in this territory, against any person or persons, who has or shall, after the rendition of said judgment, die, it shall be lawful for execution to issue against the lands and tenements of said deceased person or persons, without first reviving the judgment against their heirs or legal representatives: *Provided however*, The plaintiff or plaintiffs in execution, or his or their attorney, shall give to the executor or administrator, if there be any, of said deceased person or persons, at least three months' notice, in writing, of the existence of said judgment, before the issuing of execution: *And provided further*, That no execution shall issue, until after the expiration of twelve months from the death of such deceased person or persons.[23]

SEC. 38. Whenever a judgment shall be rendered, by any court of record, or any justice of the peace, in this territory, and an execution, against the defendant or defendants in said judgment, shall be returned by the proper officer, "no property found," on the affidavit of the plaintiff, or other credible person, being made before the clerk of said court, or justice of the peace, that said defendant or defendants have no property, within the knowledge of said affiant, in his or their possession liable to execution, and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have any effects or estate of such defendant or defendants in his or their hands, it shall be lawful for said court, or justice of the peace, to cause the person or persons, supposed to have any of the effects or estate of the said defendant or defendants, to be summoned forthwith to ap-

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(23) If execution issue subsequent to the death of the defendant, without reviving the judgment by *scire facias*, or notice to his personal representatives, as provided by this section, all proceedings thereon will be void. *Laflin* v. *Harrington*, 16 Ill. 301. *Pickett* v. *Hartsock*, 15 Ill. 279. *Finch* v. *Martin*, 19 Ill. 105.

If the notice vary from the judgment record, the variance will be fatal to all proceedings under the execution. *Pickett* v. *Hartsock*, 15 Ill. 282.

After notice given, and an execution issued, an *alias* or *pluries* may issue without further notice. *Letcher* v. *Morris*, 27 Ill. 209.

But this section applies only where there is an executor or administrator, and the judgment is a subsisting lien; otherwise the plaintiff must resort to a *scire facias*. *Scammon* v. *Swartwout*, 35 Ill. 327.

And if the lien of the judgment has expired, the heirs of the decedent must be made parties to the *sci. fa.* *Ibid.*

pear before said court or justice, as a garnishee or garnishees; and said court, or justice of the peace, shall examine and proceed against such garnishee or garnishees, in the same manner as is required by law, against garnishees in original attachments.[24]

SEC. 39. No proceedings against a garnishee or garnishees shall be quashed, or set aside, or said garnishee or garnishees discharged, on account of any insufficiency of the original affidavit, or summons, if the plaintiff or plaintiffs, or other credible person for him, shall cause a legal and sufficient affidavit to be filed, or the summons to be amended, in such time and manner as the court, or justice of the peace, shall respectively, in their discretion, direct; and in that event, the cause shall proceed, as if such proceedings had originally been sufficient.

SEC. 40. The collection of the judgments of courts of record, shall not be delayed or hindered by the death of the plaintiff, or person in whose name the judgment shall exist, but the executor or administrator, as the case may be, may cause the letters testamentary or of administration to be recorded in the court in which the judgment exists; after which, execution may issue, and proceedings be had thereon in the name of the executor or administrator, as such, in the same manner that could or might be done, or had, if the judgment exist or remain, in the name, and in favor of the executors or administrators, in his, her or their capacity as such executor or administrator.[25]

SEC. 41. The lien created by law on property, shall not abate or cease by reason of the death of any plaintiff or plaintiffs, but the same shall survive in favor of the executor or administrator of the testator or intestate, whose duty it shall be to have the judgment enforced in the manner aforesaid.

SEC. 42. When it shall be necessary, in order to secure the collection of any judgment in favor of any executor or administrator, it shall be the duty of such executor or administrator to bid for, and become the purchaser of real estate, at sheriff's

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(24) In a proceeding under this section, the garnishees may be designated by reputed names. *U. S. Express Co.* v. *Bedbury*, 34 Ill. 159.

As to the form of the judgment against the garnishee. See *Stahl* v. *Webster*, 11 Ill. 511.

If it be made to appear that a garnishee process has issued improvidently, where the defendant has property, liable to execution, the court upon motion will dismiss the same. *Chanute* v. *Martin*, 25 Ill. 64.

(25) If execution issue subsequent to the death of the plaintiff, without previously recording the letters of administration, or reviving the judgment in the names of the personal representatives, all proceedings thereunder are void. *Brown* v. *Parker*, 15 Ill. 309.

The presentation of the letters of administration in the court where the judgment exists is a compliance with the statute, and entitles the administrator to an execution; the failure of the clerk to record the letters, will not defeat a title acquired under the execution. *Darham* v. *Heaton*, 28 Ill. 273.

The execution should issue in the name of the administrator. *Ibid.* *Brown* v. *Parker*, 15 Ill. 309.

This and the following section apply only to cases where the lien of the judgment has not expired. *Scammon* v. *Swartwout*, 35 Ill. 327.

sale, which real estate so purchased, shall be assets in his hands, and may be again sold by him upon the order of the court of probate, and the moneys arising from such sale paid over and accounted for as other moneys in his hands.

SEC. 43. If any debtor shall be engaged in removing his or her property from this territory, such property shall not be exempt from levy and sale under execution or attachment: *Provided*, That nothing in this chapter contained, shall be held to authorize the levying upon and selling the necessary wearing apparel or beds and bedding of any debtor, or of the family of any debtor, under any execution or attachment.

SEC. 44. No order of attachment on any garnishee, shall be made out or issued in any court of record in this territory, for any sum less than twenty dollars.

SEC. 45. All current gold and silver coin, bank-bills, and other evidence of debt used or circulated or intended to be used or circulated as money, and issued by any corporation or state, or by the United States, may be levied upon under any execution or writ of attachment, as other personal property is levied upon or attached, and shall be returned by the officer making such levy as so much money collected without sale.

SEC. 46. Rights and shares of stock in any incorporated company, owned or held by any defendant in execution, or by any person in trust for, or to the use of any defendant in execution, may be levied upon under any execution or writ of attachment and may be sold under any execution, in the manner hereinafter provided.

SEC. 47. When any execution or writ of attachment shall be issued against any person being the owner of any shares or stock in any incorporated company, or for whom or to whose use any shares, or stock in any incorporated company, are held by any person other than such defendant, it shall be the duty of the president, cashier, secretary, or chief-clerk of such incorporated company, upon the request of the officer having such execution or writ of attachment, to furnish him a certificate under his hand, stating the number of rights or shares which the defendant holds, or which are held in trust for such defendant, or to his use, in the stock of such incorporated company.

SEC. 48. Any officer, upon obtaining information, in the manner provided in the last section, or otherwise, that a defendant in any execution or writ of attachment held by him, owns or holds any rights or shares in the stock of any incorporated company, or that such rights or shares are owned or held by any other person in trust for, or to the use of such defendant, may make a levy of such execution or writ of attachment on such rights or shares, by leaving a true copy of such writ with the president, secretary, cashier, or chief-clerk, of such incorporated company; and, if there be no such officer, then with some other officer of such incorporated company, with a certificate of the officer making the levy, setting forth that he levies upon and takes in execution or attachment, such rights or shares, to satisfy such execution or attachment.

SEC. 49. Rights or shares in the stock of any incorporated company levied upon by virtue of any writ of attachment shall be held subject to the judgment rendered in the action in which such writ is issued, and whenever any execution shall be levied upon any such rights or shares, the same shall be sold in like manner as personal property is, by existing law, provided to be sold.

SEC. 50. It shall be the duty of every officer who shall sell any rights or shares of stock in any incorporated company, under an execution, to execute to the purchaser thereof a certificate in writing, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares; and such officer shall also leave, with the president, secretary, cashier, or chief-clerk, or if there be none, with any other officer of such incorporated company, a true copy of such certificate; and thereupon it shall be the duty of the officer, clerk, or other person having charge of the books of such incorporated company to make such entries in the books of such company, as may be necessary to vest the legal and equitable title to such rights or shares of stock in the purchaser of the same.

SEC. 51. Every purchaser of rights or shares of stock in any incorporated company, at any sale thereof made by any officer, upon receiving a certificate of the sale thereof, as provided in the last section, shall be deemed and held to be the legal and equitable owner of such rights or shares of stock, and he shall be and become entitled to all dividends thereon, and to the same rights and privileges as a member of such incorporated company, as the defendant in execution was theretofore entitled to, notwithstanding such rights and shares of stock may not have been transferred upon the books of such company.

SEC. 52. Every interest in land, legal and equitable, shall be subject to levy and sale under execution, and the claim or possessory right of any defendant in execution, in or to any public lands, may be levied upon and sold under execution, in the same manner as if the same were held by such defendant in fee-simple: *Provided*, That nothing in this chapter contained shall be so construed as to give any plaintiff in execution the right to levy on any land filed on by any person, in the land-office of the Colorado land-district, and occupied as a homestead by the defendant in execution.

SEC. 53. Any judgment or decree of the so-called miners', people's, or other courts, which has been or shall be legalized and confirmed by act of the legislature, and which remains unsatisfied in whole or in part, may be revived by suit of *scire facias*, in the district court of the county where the same was rendered, and the same proceedings had thereupon as in other cases.

SEC. 54. Whenever any transcript of any judgment or decree, certified to by the officer before whom the same was rendered, shall be filed with any justice of the peace, where the amount claimed shall not exceed one hundred dollars, such magistrate shall enter judgment thereon, for the amount which shall appear due, subject to the like limitations and appeal, as in other cases.

SEC. 55. All judgments and decisions rendered by any of the so-called miners' courts, or miners' clubs, or claim clubs, or people's courts, or Kansas courts, according to the rules and regulations adopted by any neighborhood or mining district within which are now the limits of Colorado territory, when both parties made an appearance, or had notice according to such rules, and all the executions, writs, processes, sales or proceedings growing out or resulting from the same, are hereby confirmed and legalized.

SEC. 56. The foregoing section shall be deemed to apply to all such judgments, decrees, writs, processes, and sales, had or rendered at any time prior to the fifteenth day of August, A. D. 1862.

An act to provide for Homesteads in Colorado Territory.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 57. (I.) Every householder in Colorado territory, being the head of a family, shall be entitled to a homestead not exceeding in value the sum of two thousand dollars, exempt from execution and attachment, arising from any debt, contract, or civil obligation entered into or incurred after the first day of February, A. D. one thousand eight hundred and sixty-eight.

SEC. 58. (II.) To entitle any person to the benefits of this act, he shall cause the word "Homestead" to be entered of record in the margin of his recorded title to the same.

SEC. 59. (III.) Such homesteads shall only be exempt as provided in the first section of this act, while occupied as such by the owner thereof, or his or her family.

SEC. 60. (IV.) When any person dies seized of a homestead, leaving a widow, or husband, or minor children, such widow, or husband, or minor children shall be entitled to the homestead; but in case there is neither widow, husband, nor minor children, the homestead shall be liable for the debts of the deceased.

SEC. 61. (V.) The homestead mentioned in this act may consist of a house and lot or lots, in any town or city, or of a farm consisting of any number of acres, so that the value does not exceed two thousand dollars.

SEC. 62. (VI.) Nothing in this act shall be construed to prevent the owner and occupier of any homestead from voluntarily mortgaging the same: *Provided*, No such mortgage shall be binding against the wife of any married man, who may be occupying the premises with him, unless she shall freely and voluntarily, separate and apart from her husband, sign and acknowledge the same, and the officer taking such acknowledgment shall fully apprize her of her rights and ~~the effect~~ of signing such mortgage.

SEC. 63. (VII.) When any creditor shall be of the opinion that any homestead provided for in this act, is of greater value than two thousand dollars, on filing an affidavit of that fact, with the clerk of the district court, such creditor may proceed against said homestead as in ordinary cases, and if the said homestead shall sell for more than two thousand dollars and costs, the excess shall be applied to the payment of the demand of such creditor; but in all such cases the sum of two thousand dollars, free of charge or expense, shall be paid to the owner of the homestead; and in case the said homestead shall not sell for more than two thousand dollars and costs, the person instituting the proceeding, shall pay all costs of such proceeding, and the said proceeding cease and not affect or impair the rights of the owner of the homestead.

SEC. 64. (VIII.) That in case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof shall also be exempt from execution or attachment, nor shall any judgment or other claim against the owner of such homestead be a lien against the same in the hands of a *bona fide* purchaser for a valuable consideration.

Prior Statutes Repealed. An act concerning Judgments and Executions. Approved November 4, 1861. Laws 1861, p. 264.

An act to revive certain Judgments of the Miners' and other Courts by *scire facias*. Approved August 15, 1862. Laws 1862, p. 98.

An act to confirm and legalize certain acts of the People prior to the organization of Colorado Territory. Approved August 15, 1862. Laws 1862, p. 98.

An act explanatory of An act to confirm and legalize certain acts of the People prior to the organization of Colorado Territory. Approved August 15, 1862. Laws 1862, p. 99.

An act to amend an act entitled An act concerning Judgments and Executions. Approved February 24, 1864. Laws 1864, p. 100.

An act to amend an act entitled An act concerning Judgments and Executions. Approved February 8, 1865. Laws 1865, p. 72.

CHAPTER XLIX.

JURORS.

SECTION
1. Who competent as jurors; professional gamblers and keepers of gaming-houses disqualified
2. Who may be exempted; no person required to serve out of the county of residence, or county to which such county is attached for judicial purposes.
3. County commissioners, except in counties so attached, shall select twenty-three grand jurors, and twenty-four petit jurors, at least twenty-five days prior to term; judge *of district court may direct that* no grand or petit jury be selected; or that grand or petit jurors only be selected.
4. Judges of district court may direct selection of twenty-four jurors in addition to the above, and upon what day they shall be summoned to come.
5. Clerk of board of commissioners to transmit names selected to clerk of district court.
6. Clerk to issue *venire* for jurors and grand jury to appear on first day of term; or on some subsequent day if the judge of the court direct.
7. Where counties are attached together for judicial purposes, judge of district to apportion grand and petit jurors between them, at least forty-five days before term; to notify county clerk of each county; may omit such apportionment.
8. County clerk, on receiving such apportion*ment, to notify commissioners; commis*sioners to select jurors; jurors to be summoned as in other cases.
9. Service of *venire*, how and when made.
10. If jury are not selected, or not summoned, or fail to appear, court may direct jury to be summoned, or panel to be filled by talesmen.
11. Foreman to be appointed; may administer oath; to indorse all bills of indictment.
12. Grand jury to be sworn.
13. To consist of not less than sixteen nor more than twenty-three jurors; twelve to concur to finding of bill; juror giving information to be sworn.
14. Juror, of grand or petit jury, lawfully summoned, and failing to appear, without reasonable excuse, to be deemed guilty of contempt; to be fined in discretion of court.
15. Jury, how selected for trial of cause.
16. Jury-fee taxed in each case.
17. Clerk to issue certificate of attendance to jurors; county commissioners to issue a warrant on treasury for *per diem* and mileage of jurors, on presentation of such certificate.
18. Competency of juror to be determined by court, on evidence, without intervention of triers.
19. Expense of meals to jury to be taxed as costs and paid into county treasury.

SECTION 1. All male inhabitants of the territory of Colorado, of the age of twenty-one years, who are citizens of the United States, of sound mind and discretion, and not subject to any bodily infirmity amounting to disability, or to disability imposed for the commission of crime, and not being negroes or mulattoes, shall be competent persons to serve as grand and petit jurors in all courts and judicial proceedings in this territory. No person shall be eligible as a juror, in any court in this territory, who is a known professional gambler, or who keeps a house, room, saloon or other place in which gambling is carried on.

SEC. 2. Justices of the supreme court, probate judges, clerks of courts, county clerks and commissioners, attorneys and counsellors at law, sheriffs, coroners, justices of the peace, postmasters, persons who are sixty years of age, members of organized fire-companies and militia companies, and all persons exempt by any special law of this territory, shall not be required to serve on any jury, if he or they shall ask to be excused or relieved from such service; and no person shall be required to serve as a juror except in the county where he may reside, or in some county to which the county of his residence may be attached for judicial purposes.

SEC. 3. The board of county commissioners of each county in this territory, except in counties attached for judicial purposes, shall, at least twenty-five days prior to each and every term of the district court required to be held in such county, select twenty-three qualified persons to serve as grand jurors, and twenty-four qualified persons to serve as petit jurors, at the ensuing term of the district court: *Provided*, That if the judge of the district court of such county shall, before the selecting of such jurors, in writing, direct the said board not to select jurors as aforesaid, then no jurors shall be selected to attend such term; and the said judge may direct that grand, or petit jurors only, shall be selected, and in such case the said board shall proceed according to such direction.

SEC. 4. If the judge of the district court of any county shall be of the opinion that the business to be transacted at any term of the district court in such county will require a petit jury to remain in attendance at such term for more than two weeks, it shall be the duty of such judge to direct the board of county commissioners, in writing, to select twenty-four persons to serve as petit jurors, in addition to the number mentioned in the third section of this chapter, and to direct upon what day of such term, or of the month and year, the jurors last mentioned will be required to appear and enter upon the service imposed upon them by law; and the said board shall proceed to select twenty-four qualified persons to serve according to such direction.

SEC. 5. Whenever, and as soon as, jurors shall be selected, as provided in sections three and four of this chapter, the clerk of the board of county commissioners shall certify to the clerk of the district court of such county, the names of the persons selected as grand jurors, and the names of the persons selected as petit jurors; and if persons shall be selected as provided in section four, the time when such persons will be required to appear at the term of court, shall also be given in such certificate.

SEC. 6. Whenever the clerk of the district court of any county shall receive the names of the persons selected, as provided in section three, he shall, unless otherwise directed by the judge of such court, issue a *venire*, under the seal of the court, directed to the sheriff of the proper county, commanding him to summon the persons so selected, to appear in person before such court, on the first day of the next term of such court, at ten o'clock in the forenoon of that day. If the judge of such district court shall direct that grand or petit jurors shall be summoned to appear on any day of the term, subsequent to the first, the *venire* issued as aforesaid shall be made returnable according to such direction. If jurors shall be selected as provided in section four of this chapter, such jurors shall be summoned to appear on the day designated by the judge of such court, as provided in section four.

SEC. 7. Whenever two or more counties are attached for judicial purposes, it shall be the duty of the judge of the district court of the counties so attached, at least forty-five days prior to each and every term of the district court by law required to be held in either of such counties, to apportion the grand and petit jurors, required by law to be summoned to attend at such term, among the several counties so attached, respectively, having reference to the population of the several counties so attached, respectively, and to transmit to the county clerks of the several counties, respectively, a statement under his hand of the number of grand and petit jurors which will be required to be summoned in each of the several counties, according to such apportionment: *Provided*, That if the judge of any such court shall be satisfied that a grand or petit jury will not be required to transact the business pending in such court, at such term thereof, he may omit such apportionment, or may require that grand jurors only, or petit jurors only, shall be selected and summoned.

SEC. 8. It shall be the duty of the county clerk, upon receiving the statement or apportionment, mentioned in section seven, to notify the county commissioners thereof, and the county commissioners shall, at least twenty-five days prior to the term of court mentioned in such statement or apportionment, proceed to select the number of grand and petit jurors required to be summoned from such county, and the county clerk shall certify the names of the persons so selected, to the clerk of the district court, and *venires* shall be issued, commanding the sheriffs of the proper counties to summon such jurors, as in other cases; and when so summoned they shall attend at such term, notwithstanding the same may not be held in the county from whence they are summoned.

SEC. 9. A *venire* may be served by reading the same to the juror, personally, or by leaving a copy thereof at his usual place of abode, with some person above the age of twelve years; and the same shall be served at least five days before the day on which jurors are required to appear.

SEC. 10. If the county commissioners of any county shall fail to select jurors to attend at any term of court, or if any officer charged with any duty respecting the selecting or summoning of jurors, shall fail to perform the same, and thereby it shall happen that jurors shall not be summoned as aforesaid, or if when selected and summoned as aforesaid, any juror or jurors shall not appear, or if by reason of challenges or any other cause there shall not be a sufficient number of qualified persons to make up the panel, the court may order a jury to be summoned, or the panel to be filled by summoning talesmen, and for that purpose the court may issue special *venires*, or require the sheriff or sheriffs of the county or counties over which the court has jurisdiction, to summon qualified persons from the body of such county or counties, to constitute a jury or serve as talesmen on any jury, as the case may be, and persons so summoned shall serve as jurors until discharged by the court. If jurors summoned to attend at any term of court, shall for any cause be discharged by the court, talesmen may be summoned to supply their places.

SEC. 11. Before the grand jury at any term of court shall be sworn or affirmed, the court shall appoint a foreman of such jury, and such foreman shall have power to administer an oath or affirmation to any and all witnesses who may be required to testify before such jury; he shall also indorse upon every bill that may be presented to the grand jury the finding of such jury, as that the same is "A true bill," or "Not a true bill," as the case may be, and sign his name thereto, before the same shall be returned into court.

SEC. 12. Before the grand jury shall enter upon their duties, an oath or affirmation shall be administered to the foreman, as follows, to wit: "You, as foreman of this inquest, do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you will present no person through malice, hatred or ill-will; and that you will leave no one unpresented through fear, favor or affection, or for any fee or reward, or the hope or promise thereof; that you will keep secret your own council, and that of your fellows, touching the present service; and that in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." And an oath or affirmation shall be administered to the other grand jurors, as follows, to wit: "You, and each of you, do solemnly swear (or affirm) that you will well and truly keep and observe the oath that A. B., your foreman, has just taken before you, so help you God."

SEC. 13. A grand jury shall consist of not less than sixteen persons, nor more than twenty-three persons, and twelve grand jurors shall assent to the finding of every true bill. Whenever any member of a grand jury shall give information touching any matter pending before such jury, he shall take an oath or affirmation, in the same manner as other witnesses.

SEC. 14. If any person who shall be lawfully summoned to appear before any district court, as a grand or petit juror, shall fail, neglect, or refuse to appear, as required by such summons, without reasonable excuse, he shall be deemed guilty of contempt, and shall be fined as the court may direct.

SEC. 15. Whenever it shall be necessary to impanel a jury, for the trial of any civil or criminal cause pending in any district court, the clerk of such court shall, by chance, draw from a box to be kept for that purpose, the names of a sufficient number of petit jurors, to constitute such jury; and if the panel of petit jurors in attendance upon the court, shall be exhausted before such jury shall be filled, talesmen may be summoned for the purpose of making up such jury.

SEC. 16. A jury-fee of five dollars shall be taxed as part of the costs of the suit in each cause tried by jury. The clerk shall pay such fee when collected, into the county treasury.

SEC. 17. The clerk shall, without fee, furnish to each juror who shall attend at any term of court, a certificate showing the number of days that such juror shall have attended at such term; and upon presentation thereof to the county commissioners, they shall issue to such juror their warrant upon the county treasury for the amount of the per diem and mileage of such juror.

SEC. 18. If, upon the trial of any issue of fact in any civil action, or any issue out of chancery, or of any indictment or information, either party shall desire to introduce evidence of the incompetency, disqualification or prejudice of any juror selected or called for the trial of such issue, and who by the examination of such juror, shall appear to be competent, qualified and unprejudiced, such evidence shall be heard and the competency of such juror shall be determined by the court, without the intervention of triers.

SEC. 19. In all civil cases, if any expenses shall be incurred in furnishing meals or provisions to jurors impanelled to try such causes, such expenses shall be taxed as costs in the suit, against the unsuccessful party, and when collected the same shall be paid into the county treasury, but in the first instance the same shall be paid by the county.

Prior Statutes Repealed. An act concerning Jurors. Approved November 5, 1861. Laws 1861, p. 334.

An act to amend an act entitled An act concerning Jurors. Approved August 9, 1862. Laws 1862, p. 76.

An act to amend an act entitled An act concerning Jurors. Approved March 10, 1864. Laws 1864, p. 101.

An act to provide for summoning Jurors in certain Counties, and for other purposes. Approved February 10, 1865. Laws 1865, p. 75.

An act to reduce the several acts concerning Jurors into one act, and to amend the same. In force January 11, 1867. Laws 1867, p. 69.

CHAPTER L.

JUSTICES AND CONSTABLES.

SECTION

1. Jurisdiction of justices of the peace; not to exceed three hundred dollars; in Arapahoe county not to exceed one hundred dollars.
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66. General duties of constable; to preserve peace, suppress riots, serve all process, etc.
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68. Justice may issue execution against the body in actions of trespass or trover.
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75. Justice to return into district court names of witnesses; clerk to issue subpœna.
76. If defendant plead guilty, jury or justice, if jury not required, to hear evidence and assess fine; defendant may appeal.
77. Offences herein specified not to be prosecuted after expiration of twelve months; exception.
78. Justice to make return quarterly to county treasurer, of fines assessed by him; and to pay over all such fines collected; forfeiture.
79. Constable to pay over fines to the justice imposing same; forfeiture double the amount; how collected; constable may receive fines before execution issued.
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81. Justice receiving the docket of another justice, may proceed to complete all unfinished business; powers in such case.
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85. Penalty for failure by justice to deliver books and papers, on demand, as required in section 82.
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93. Securities not liable beyond the penalty of the bond; otherwise as to principal; court may award execution as occasion may require.
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104. Further exceptions.
105. Plaintiffs allowed a change of venue.

SECTION 1. Justices of the peace shall have jurisdiction in their respective counties to hear and determine all complaints, suits and prosecutions, of the following description: *First*, In actions of debt, on bonds, contracts, agreements, promissory notes, and other instruments in writing, in which the amount claimed to be due does not exceed three hundred dollars. *Second*, In actions of *assumpsit* upon any contract or promise, verbal or written, express or implied, for a valuable consideration, in which the amount claimed does not exceed three hundred dollars. *Third*, In suits brought for goods, wares or merchandise, sold and delivered; for work and labor done, or services rendered; for money had and received; for money lent; for money received by the defendant for the use of the plaintiff, or for money paid by the plaintiff for the defendant, at his request, in which the amount claimed to be due does not exceed three hundred dollars. *Fourth*, In suits for money claimed to be due on unsettled accounts, in which the balance claimed to be due does not exceed three hundred dollars. *Fifth*, In suits for money claimed to be due upon settled accounts, between individuals in which the balance ascertained to be unpaid, shall not exceed three hundred dollars. *Sixth*, In all suits upon contracts or promises for rent, in which the amount claimed to be due does not exceed three hundred dollars. *Seventh*, In actions for debt, for trespass in cutting timber, in which the amount claimed does not exceed three hundred dollars. *Eighth*, In actions for money claimed to be due for specific articles of property, whether claimed to be due by bond, note or other instrument in writing, or upon a promise express or implied, in which the value of the property claimed does not exceed three hundred dollars. *Ninth*, For all debts or demands claimed to be due, not exceeding three hundred dollars, in which the action of debt or *assumpsit* will lie.[1] *Tenth*, In all actions in which an executor or administrator is plaintiff, or for property purchased at an executor's or administrator's sale, where the amount claimed does not exceed three hundred dollars. *Eleventh*, In all actions in which an executor or administrator is defendant, where the amount claimed does not exceed three hundred dollars. *Twelfth*, In all actions of trespass on personal property, and of trover and conversion, in which the damages claimed do not exceed three hundred dollars. *Thirteenth*, In all cases of assault, assault and battery and affrays, in which the people are plaintiffs, in which they shall have exclusive original jurisdiction, unless in cases of cities or incorporated towns, in which jurisdiction is otherwise conferred by law.[2] *Fourteenth*, In all actions against sheriffs, coroners and constables for malfeasance, misfeasance or nonfeasance in office, wherein the amount claimed does not exceed three hundred dollars.[3] *Fifteenth*, In all actions of trespass to mining claims or other real property, in which the amount claimed does not exceed three hundred dollars: *Provided*, That in the county of Arapahoe the jurisdiction of justices of the peace, shall not extend to actions in which the debt, damages or cause of action shall exceed one hundred dollars. The provisions of this section shall apply as well to proceedings commenced by attachment, as to other cases.

Sec. 2. In all suits provided for in the preceding section,

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(1) A justice has jurisdiction in an action brought to recover a debt evidenced, and subsisting, in the judgment of another justice. *C. & R. I. R. R. Co.* v. *Whipple*, 22 Ill. 337.

But not in an action for a breach of covenant. *Kennedy* v. *Pennick*, 21 Ill. 597.

(2) The jurisdiction is not taken away by an allegation, in the complaint, that the assault was committed with a deadly weapon, *Severin* v. *The People*, 37 Ill. 414.

(3) The remedy provided by the eighty-eighth section is cumulative to the preceding under this clause. The party injured may at his election, sue the constable, alone; or bring an action against him, and his sureties, on his official bond. *Briley* v. *Copeland*, 14 Ill. 38.

the jurisdiction of the justice shall be deemed to extend to cases in which the claim, debt, demand, or damages, may have originally exceeded the sum of three hundred dollars, but shall have been reduced by fair credits below that sum.[4]

SEC. 3. Justices of the peace, being duly qualified according to law, are authorized and empowered, and it is hereby made their duty, to receive money on all notes and demands which may have been placed in their hands for suit or collection, and also upon all judgments rendered by them prior, to the issuing execution thereon.

SEC. 4. It shall be the duty of every justice, whenever a suit shall be commenced before him, to record in a book kept for that purpose, the names of the parties, the amount and nature of the debt sued for, the date and description of the process issued, and the name of the officer to whom such process shall be delivered; and throughout the whole of the proceedings in any suit, it shall be his duty, whenever any process shall be issued or returned, or any order made, or judgment rendered, to make a written memorandum of the same, in the same book, and to file and safely keep all papers given him in charge.[5]

SEC. 5. Every suit before a justice, except such as are hereinafter provided for in a different manner, shall be commenced by summons, which shall be in the following form, as nearly as the case will admit, viz.:[6]

TERRITORY OF COLORADO, } ss.
——— County. }

The people of the territory of Colorado, to any constable of said county, greeting:

You are hereby commanded to summon A. B. to appear before me, at ——, on the —— day of ——, at —— o'clock, ——,

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(4) The jurisdiction of the justice depends upon the amount of the plaintiff's demand exclusive of costs. *Simpson* v. *Updegraff*, 1 Scam. 594.

The justice has no jurisdiction of a matter of set-off, which after deducting the plaintiff's claim exceeds the statutory amount; though it seems that if the defendant release the excess, this would confer jurisdiction. *Seafkas* v. *Evey*, 29 Ill. 179.

The presumption is that all credits allowed by the plaintiff, in his account, are fair credits. *Huginin* v. *Nicholson*, 1 Scam. 576.

The plaintiff may remit interest upon his demand, or, as it seems, a portion of the principal, and thus confer jurisdiction; a fair credit is such an one as may be made without detriment to the defendant. *Raymond* v. *Strobel*, 24 Ill. 114. *Korsoski* v. *Foster*, 20 Ill. 32.

The jurisdiction of the justice does not depend on the form of the plaintiff's summons; nor the amount claimed by it; nor the matters set forth in his account; but upon the facts as proved upon the trial. *C. & R. I. R. R. Co.* v. *Reid*, 24 Ill. 144. *Ballard* v. *McCarty*, 11 Ill. 502. *Vaughn* v. *Thompson*, 15 Ill. 40. *Blanchard* v. *Rogers*, 2 Gilm. 340.

Justices of the peace have no jurisdiction of actions upon penal statutes, except where expressly given. *Bowers* v. *Green*, 1 Scam. 42.

(5) The entry of the justice in his docket cannot be controverted by parol testimony. *Garfield* v. *Douglass*, 22 Ill. 100.

(6) There is no distinction in the forms of actions, in justices' courts; it was the intention of the legislature that under the form of summons provided in the statute, all the various actions, in which justices have jurisdiction should be tried. *Swingley* v. *Haynes*, 22 Ill. 216. *Brewster* v. *Grover*, 29 Ill. 246.

to answer the complaint of C. D., for a failure to pay him a certain demand, not exceeding three hundred dollars, and hereof make due return as the law directs. Given under my hand and seal, this —— day of ——, 18—.

—— ——, J. P. [L. S.]

In which summons, the justice shall specify a certain place, day, and hour, for the trial, not less than five nor more than fifteen days from the date of such summons, at which time and place the defendant is to appear; which process shall be served at least three days before the time of trial[7] mentioned therein, by reading the same to the defendant or defendants; or in case the defendant is a corporation, by reading the same, and delivering a copy thereof to some officer, agent or clerk of such corporation; if such summons be returned "not served," the cause may be continued, and an *alias* summons issued, returnable in not less than five nor more than fifteen days from the date thereof, and such *alias* shall be served in like manner as original summons, not less than three days before the day set for the defendant's appearance.

SEC. 6. If the defendant, being served with process, shall not appear at the hour appointed for his appearance in such process, or in one hour thereafter, and no sufficient reason is assigned to the justice, why he or she does not appear, then the justice shall proceed to hear and determine the cause, in the absence of said defendant, but shall not give judgment for the plaintiff, unless the said plaintiff fully prove his demand, in the same manner as if the defendant had been present and denied the same.

SEC. 7. If the plaintiff, or his agent, shall not appear at the time appointed for the trial aforesaid, and no sufficient reason shall be assigned to the justice why said plaintiff or his agent does not appear, the justice shall dismiss the suit, and the plaintiff shall pay the costs, unless the defendant shall consent that such suit shall be continued to another day, in which case, the same proceedings shall take place at the second day, so fixed for the trial, as above provided; but this section shall not require the dismissal of a suit, on a note placed in the hand of a justice for collection.

SEC. 8. If, two or more persons shall be sued jointly before any justice of the peace, and all of such defendants shall have had notice as aforesaid by warrant or summons, the appearance of any of the said defendants at the time of trial, shall be sufficient to justify the said justice in proceeding as if all were present; and if none of said defendants shall appear after such

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(7) If a justice give judgment against a defendant, upon service of process made *less* than three days before the time of trial, and without an appearance by such defendant, the whole proceeding is absolutely void. *Johnson* v. *Baker*, 38 Ill. 101.

notice, the justice shall, if the plaintiff's demand be established as aforesaid, proceed as in other cases of default; and in either of the aforesaid cases, the justice shall not divide the amount of the debt proved among the defendants, but shall give one entire judgment for the whole amount proved to be due against so many of the defendants jointly, as shall be proved to be jointly indebted to the plaintiff. But if it shall appear to the justice that any two or more of the defendants are severally indebted to the plaintiff, upon separate and different debts, or causes of action, or upon several or different promises or contracts, such plaintiff shall not be allowed to bring in such separate claims, nor shall the plaintiff be barred by the determination of his suit against such joint defendants, from prosecuting his suit against the respective defendants, for the recovery of such separate demands.

SEC. 9. Where there are several joint debtors, and all cannot be served with process, the justice may, on motion of the plaintiff, continue the cause, and issue *alias* summons as to the defendants not served; or may render judgment against such defendants as are served; and the plaintiff may at any time thereafter sue out a summons in the nature of a *scire facias*, against the defendants not served, briefly reciting such suit, and the judgment therein, and commanding that such defendants be summoned to show cause why they should not be made parties to such judgment, which summons shall be served in the same manner as other summons; on the return thereof, served, the justice shall proceed to hear and determine the cause, in the same manner as if such defendants had been originally served with summons; and the judgment, if for the plaintiff, shall be that such plaintiff recover of such defendants, together with the defendants in the former judgment, his debt or damages, and his costs; if any sum of money hath been paid or collected on such former judgment, the amount shall be credited upon such subsequent judgment, and only the residue of the plaintiff's debt or demand shall be collected.

SEC. 10. Previous to commencement of any trial before a justice of the peace, either party may move to have such trial put off for a time not exceeding ten days, upon making proof, either upon his own oath or that of a credible witness, that the said party cannot safely proceed to trial, on account of the absence of a material witness; or on account of any other cause or disability which would prevent him from obtaining justice at such trial, and if the justice be satisfied that the party so applying cannot safely proceed to trial, and also that the party so applying has used due diligence to be ready at the time of trial first appointed,[8] and that his not being ready is not the effect of such

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(8) As to what is due diligence, see section thirteen of the chapter concerning Practice, and Notes.

party's own neglect or intention, then the said justice shall order the trial of said cause to be deferred to another day and hour, within ten days, to be by him appointed, and the party praying such continuance shall pay all the costs occasioned thereby: *Provided*, The justice may at any time continue any case without oath, if the parties consent, or if but one party be present and shall consent, or if he shall deem it essential to justice to do so, for any good cause shown.

SEC. 11. When the parties shall appear[9] and be ready for trial, the justice shall proceed to hear and examine their respective allegations[10] and proofs, and shall thereon[11] give judgment against the party who shall be proved to be indebted to the other, for so much money in dollars and cents, as shall appear to be due, with costs of suit; but if neither party shall appear to be indebted to the other, then the judgment shall be against the plaintiff, for the costs of suit only; and if such judgment be rendered upon any note or bond, or for a balance due upon a settled account, the justice shall allow interest from the time when the same became due, and include the same in the said judgment; and in all cases, the judgment shall bear interest, at the rate of ten per cent. per annum, until paid.

SEC. 12. The justice shall indorse on the back of every summons or warrant, the sum demanded by the plaintiff, with the costs due thereon; and the defendant may pay the same to the constable in whose hands such process may be, who shall give a receipt therefor, which shall exonerate the defendant from such debt and costs.[12]

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(9) If the defendant is not served with process, the justice can give judgment against him, only upon his personal appearance. Where the defendant sent to the justice a letter, authorizing the entry of judgment against him, for an amount named, and such judgment was thereupon rendered, without service of process, or the appearance of the defendant, it was held that the proceeding was absolutely void. *Evans* v. *Pierce*, 2 Scam. 468.

The defendant's appearance can not be entered by an attorney or agent, even upon a written authority. *Nelson* v. *Rockwell*, 14. Ill. 377.

(10) There are no written pleadings in justices' court; neither party can be required to even file his account, in writing. *Bates* v. *Bulkley*, 2 Gilm. 393. *Minard* v. *Lawler*, 26 Ill. 302.

The defendant has a right to insist upon proof of all facts material to the plaintiff's right of action, precisely as if written pleas were filed. *Town of Lewiston* v. *Procter*, 27 Ill. 416.

If the plaintiff sue as a corporation, it must prove its corporate character. *Ibid.*

The statute of frauds will be deemed to have been pleaded, when necessary to the defence. *Comstock* v. *Ward*, 22 Ill. 249. *Williams* v. *Corbett*, 28 Ill. 263.

But in *Bates* v. *Bulkley*, the court say that it is the duty of the defendant to state his defence, before the commencement of the trial, so that the other party may have notice of it; and it is the duty of the justice to note upon his docket the substance of the defence thus stated, so that, if subsequent occasion should require, it might be known what questions were tried before the justice. 2 Gilm. 393.

(11) The justice can not, after hearing the evidence, take the cause under advisement, for an indefinite time; such a postponement, even when made by consent of parties, has the effect to work a discontinuance. *Harrison* v. *Chipp*, 25 Ill. 579.

But the justice may adjourn, or take the cause under advisement, until some certain, and reasonable time, for reflection. *Hall* v. *Reber*, 36 Ill. 483.

(12) The plaintiff cannot recover an amount greater than that indorsed upon the summons, except it be for interest lawfully demandable. *Dowling* v. *Stewart*, 3 Scam. 195. *Badgley* v. *Heald*, 4 Gilm. 65.

SEC. 13. All evidence before a justice of the peace, shall be under oath, by parol, except when it shall be necessary to exhibit the signature or handwriting of a party against him, and except such evidence as shall be taken by deposition, as hereinafter mentioned.

SEC. 14. No party to any suit before a justice shall be permitted to deny his or her signature to any written instrument upon which suit shall be founded, or which shall be offered as a set-off or acquittance for the debt demanded in such suit, unless the said denial be under the oath of the party so denying the signature purporting to be his or her own.[13]

SEC. 15. If any witness, residing within the county wherein a suit shall be pending, before a justice, shall be unable to attend, on account of age, sickness or other cause, it shall be lawful for the justice before whom such suit shall be pending, or some other justice of the county, to take the deposition of such witness, in writing; and the justice before whom such suit shall be pending, shall adjourn the trial not more than six days, for that purpose, and shall give both parties notice of the time and place of taking such deposition.

SEC. 16. If any witness whose testimony shall be material, in a suit pending before a justice, shall reside out of the county wherein such suit shall be pending, the party desiring it may take his or her or their deposition or depositions, before any justice of the peace in the county in which such witness or witnesses reside, and the depositions taken in conformity thereto may be given in evidence in said suit, if it shall be made to appear that the opposite party had reasonable notice of the time and place of taking such depositions.

SEC. 17. No party shall be permitted to introduce at the trial any bond, note, debt, or other claim, against his adversary, which he shall have acquired after the commencement of the suit.

SEC. 18. In all suits which shall be commenced before a justice of the peace, each party shall bring forward all his or her demands against the other, existing at the time of commencing the suit, which are of such a nature as to be consolidated into one action or defence,[14] and on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for any such debt or demand.[15]

But the statute requiring the indorsement of the plaintiff's demand is directory, and a failure of the justice to observe it, will not defeat the action. *Swift* v. *Woods*, 5 Blf. 97. *Eaton* v. *Graham*, 11 Ill. 620.

On appeal, judgment cannot be given for an amount exceeding the indorsement on the summons. *C. B. & Q. R. R. Co.* v. *Manard*, 20 Ill. 9.

(13) See *Griswold* v. *Trustees, etc.*, 26 Ill. 44.

(14) In an action upon a contract, the defendant cannot set-off a claim for unliquidated damages, not in any way connected with the contract. *Bush* v. *Kindred*, 20 Ill. 94.

(15) Where a suit was brought and compromised without trial: *Held*, to be no bar to a subse-

SEC. 19. When either party shall require the attendance of a witness, in any suit pending before a justice, it shall be the duty of the justice to issue a subpœna, in the following form nearly as the case will admit, viz.:

TERRITORY OF COLORADO, } ss.
——— County. }

The people of the territory of Colorado, to A. B.

You are hereby required to appear before me, at ——, on the —— day of ——, at —— o'clock, ——, then and there to testify the truth, in a matter in suit, wherein C. D. is plaintiff, and E. F. defendant; and this you are not to omit, under the penalty of the law. Given under my hand and seal, this —— day of ——, 18—.

—— ———, J. P. [L. S.]

Which subpœna may be served by a constable, or any other person, by reading the same to the witness; but no mileage shall be allowed to the person serving the same.

SEC. 20. In all cases where a justice of the peace is required to issue a subpœna, at the instance of either party to a suit, it shall be his duty to insert the names of four witnesses in each subpœna, if the party demanding the same, shall require the attendance of that number; and in no case shall a justice of the peace be permitted to charge, and receive pay, for any subpœna commanding the citation of a less number, where as many as four shall be required by the same party, at the same time, to be used in the same suit.

quent action upon a demand then existing and not included in said action. *Carson* v. *Clark*, 1 Scam. 114.

The institution of a suit upon one of two causes of action, susceptible of consolidation, and the dismissal of such suit upon trial, for want of sufficient proof to charge the defendant, will not bar a subsequent suit for the other cause of action. *McKinney* v. *Finch*, 1 Scam. 152.

The object of this provision is to prevent the multiplicity of suits, and the unnecessary accumulation of costs where the causes of action are small. *Ibid.*

This provision has not the effect to bar the parties from producing in the district court items of account which were not presented on the trial below; such additional accounts may be prosecuted in the district court, by leave, which it is in the discretion of the court to grant or refuse. *Waterman* v. *Bristol*, 1 Gilm. 598. *Webb* v. *Lasater* 4 Scam. 547.

It seems that where a defence is desired to be interposed, in the district court, which was not presented on the trial below, the application for leave to present such matter of defence, should be made before trial, and in proper season, in order that the plaintiff may have opportunity to rebut it. *Bates* v. *Bulkley*, 2 Gilm. 393.

And, if new causes of action, or matters of defence be presented, the other party may have a continuance if not prepared to resist the same. *Webb* v. *Lasater*, 4 Scam. 543.

But a defence which has arisen since the original trial, may, it seems, be presented on trial of the appeal, as a matter of right. *Minard* v. *Lawler*, 26 Ill. 302.

And it seems that where no defence was made before the justice, the defendant has a right to present his defence in the district court, upon such terms, as to notice, to avoid surprise upon the other party, as the court may prescribe. *Ibid.*

Defences of a dilatory character must be taken advantage of before the justice of the peace; such matters cannot be urged for the first time in the district court. *Moss* v. *Flint*, 13 Ill. 570. *Adams* v. *Miller*, 14 Ill. 70. *Conley* v. *Good*, Breese, 135. *Pearce* v. *Swan*, 1 Scam. 268. *Greer* v. *Wheeler*, 1 Scam. 554. *Bines* v. *Proctor*, 4 Scam. 177. *Duncan* v. *Charles*, 4 Scam. 561. *Wilson* v. *Nettleton*, 12 Ill. 61.

A motion to dismiss an action for want of security for costs must be made in the first instance, but may be renewed, on appeal, if refused by the justice. *Adams* v. *Miller* 12 Ill. 27.

SEC. 21. Each witness so summoned shall be entitled to the fees allowed by law, to be taxed with the other costs of the suit, and paid when the debt and costs are collected; but if more than two witnesses shall be sworn in any case to testify to one fact, on the same side, the party requiring such extra witnesses shall be at the whole expense of procuring the same; but no such fee shall be taxed by the justice, unless claimed by the witness attending.

SEC. 22. In all trials before justices of the peace, when either party may not have a witness or other legal testimony to establish his or her demand, discount or set-off, the party claiming such demand, discount or set-off, may be permitted to prove the same by his or her own oath, and the adverse party shall also be allowed to testify regarding the said demand, discount or set-off: *Provided*, That such party, claiming the benefit of his own oath, shall first make oath that he has a demand, discount or set-off in said cause, and has no witnesses or other legal testimony by which he can prove the same:[16] *And provided, further*, That no person shall be allowed to prove his demand, discount or set-off, unless the adverse party be present or shall have been notified thereof,[17] for which purpose the justice may continue the cause for such time as may be necessary. This section shall also apply on the trial of causes appealed from justices of the peace to the district court.

SEC. 23. If both parties agree to have a difference decided by a justice of the peace, without process, he shall enter the same on his docket, noting particularly such consent, and proceed as in other cases.

SEC. 24. In all cases the parties to a suit before a justice shall have the privilege of referring the difference between them to arbitrators, mutually chosen by them, who shall examine the matter in controversy, and make out their award thereon in writing, and deliver the same to the justice, who shall enter the same award on his docket, and give judgment according thereto.[18]

SEC. 25. At any time before any evidence is given in any suit before a justice, either party upon advancing the jury-fees, may demand to have the cause tried by a jury; whereupon, it shall be the duty of the justice to issue his writ, directed to any constable, commanding him to summon a jury of six men, or twelve if a less number be objected to, and the said jury shall

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(16) See *Lee* v. *Quirk*, 20 Ill. 394.

(17) Notice must be given to the adverse party personally; notice to his attorney is not sufficient. *Carver* v. *Crocker*, 1 Scam. 265.

In an action upon a promissory note, by indorsee against makee, the indorser is not an adverse party within the meaning of this statute. *Arnold* v. *Johnson*, 1 Scam. 197.

(18) A justice has no jurisdiction to render judgment on an award, unless, at the time of the submission, there was an action pending before him, upon the causes submitted. *Shirk* v. *Trainer*, 20 Ill. 302.

be impanelled as soon as may be, the justice adjourning the cause if necessary, to any time, not exceeding three days, for that purpose; the jury when impanelled shall be sworn by the justice to try the cause according to the evidence, and the justice shall enter judgment upon their verdict according to the finding thereof.

SEC. 26. The following shall be the form of the writ for summoning the jurors, viz.:

TERRITORY OF COLORADO, }
——— County. } SS.

The people of the territory of Colorado to any constable of said county, GREETING:

We command you to summon —— lawful men of your county, to appear before me at ——, on the —— day of ——, 18—, who are not of kin to A. B., plaintiff, or to C. D., defendant, to make a jury between said parties in a plea of ——; because as well the said plaintiff as the said defendant have put themselves upon the country for trial; and have you then and there the names of the jury, and this writ. Witness my hand and seal, this —— day of ——.

—— ——, J. P. [L. S.]

SEC. 27. In trials of the right of property taken on execution, attachment, or other process, by constables, the number of jurors shall be six instead of twelve, unless the parties shall agree upon a larger number, not exceeding twelve, in which case the number agreed upon shall constitute the jury: *Provided*, That either party shall have the right to require twelve jurors upon advancing the additional costs and fees accruing in consequence of increasing the number over six; such additional costs and fees not being in any event chargeable against the other party.

SEC. 28. In all cases, where a witness shall be duly served with a subpœna, and shall fail to attend at the trial, conformably thereto, and in all cases where a person shall be summoned as a juror, to try any cause before a justice of the peace, and shall fail to attend at the time and place appointed in such summons, the justice shall have power to issue an attachment, directed to any constable of the county, commanding him forthwith to bring before such justice, the body of such juror or witness, so failing to attend as aforesaid, to show cause why he should not be fined for a contempt; and on the appearance of such juror or witness on such attachment, it shall be lawful for the justice of the peace to fine him, in any sum, not less than one dollar, nor more than ten dollars, or wholly discharge him, if satisfactory excuse be made.

SEC. 29. If any juror, summoned as aforesaid, shall be interested in the event of the suit, or of kin to either party, or shall have expressed his opinion on the matter about to be tried, or shall, for any cause, to be judged of by the justice, be considered as a partial or improper juror, in that case, the justice shall discharge such juror; and when, by such discharge, or the failure of any juror to attend, the jury shall not be complete, the justice shall direct the constable to summon as many persons as shall be required to complete such jury, instantly, from among the bystanders or other persons in his bailiwick, which summons shall be verbal; and the person so summoned shall be bound to serve on such jury, and on refusal or failure to do so, may be attached and fined for contempt, as aforesaid. And in all cases of jury trial before a justice of the peace, each party shall be entitled to three peremptory challenges.

SEC. 32. Every person who shall appear before a justice of the peace, when acting as such, or who shall be present at any legal proceeding before a justice, shall demean himself in a decent, orderly and respectful manner, and for failure to do so, such person shall be fined, by the said justice, for contempt, in any sum not more than five dollars.

SEC. 31. Previous to the commencement of any trial before a justice of the peace, the defendant, or his or her agent, may make oath, that it is the belief of such deponent, that the defendant cannot have a fair and impartial trial before such justice, whereupon, it shall be the duty of the justice, when payment of all costs accruing up to the time the change of venue is taken, immediately to transmit all the papers and documents belonging to the suit to the nearest justice of the peace, who shall proceed as if the said suit had been instituted before him.

SEC. 32. In all cases before justices of the peace, either party may have the case continued any reasonable time, not exceeding one month, for the purpose of taking the deposition of any non-resident witness; which deposition shall be taken in conformity to the manner of taking and returning depositions of non-resident witnesses in the district courts, in this territory.

SEC. 33. Executions in justices' courts may be issued immediately after rendition of judgment.

SEC. 34. All executions issued by a justice of the peace, shall be directed to any constable of the proper county, and made returnable to the justice issuing the same, within thirty days from the date; such execution shall be levied only on personal property, and shall be in the following form, as nearly as may be, viz.:

TERRITORY OF COLORADO, } ss.
——————— County. }

The people of the territory of Colorado to any constable of said county, greeting:

We command you that, of the goods and chattels of A. B., in your county, you make the sum of —— dollars and —— cents, debt, and —— dollars and —— cents, cost, which C. D. lately recovered before me, in a certain plea against the said A. B., and hereof make return within thirty days from this date. Given under my hand and seal, this —— day of ——, 18—.

—— ——, J. P. [L. S.]

SEC. 35. When it shall appear, by the return of any execution, issued as aforesaid, that the defendant has not personal property within the county, sufficient to satisfy the debt, and it is desired by the plaintiff to have execution issued to some other county, in which it is alleged that the defendant has personal property, the justice shall issue such execution, directed to any constable of the county where such property shall be said to be, to which execution shall be attached an official certificate of the county clerk of the county in which the same shall be issued, setting forth, under the seal of said court, that such justice, so issuing, was at the time of issuing said execution, a justice of the peace in and for said county, and no constable shall be bound to execute any such process unless so authenticated.

SEC. 36. When an execution shall be issued to another county, as provided in the preceding section, it shall be the duty of the constable receiving the same, to proceed to the execution of the same, and make return as in other cases.

SEC. 37. When it shall appear by the return of the execution first issued, as aforesaid, that the defendant has not personal property sufficient to satisfy the debt and costs, within the county in which judgment is rendered, and it is desired by the plaintiff to have the same levied upon real property, in that or any other county, it shall be lawful for the justice to certify to the clerk of the district court of the county in which such judgment was rendered, a transcript, which shall be filed by said clerk and recorded by him in a book kept for that purpose, at the request and cost of any person interested, either in the judgment or proceedings had under the same; the fee for recording the transcript shall be taxed in the bill of costs against the defendant; such judgement shall thenceforward have all the effect of a judgment of the said district court, and execution shall issue thereon, out of that court, as in other cases.

SEC. 38. Appeals from judgments of justices of the peace to the district court, shall be granted in all cases, except on judgment confessed:[19] *Provided*, The party praying the appeal, shall within ten days from the rendering of the judgment from which

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(19) No one but a party to the suit can appeal from the judgment. *Schooner Constitution* v. *Woodworth*, 1 Scam. 512.

he desires to take an appeal, enter into bond, with security, to be approved and conditioned, as hereinafter provided, and pay the cost of granting the appeal only.

SEC. 39. The bond required to be given, shall be in substance as follows:

KNOW all men by these presents, that we A. B. and C. D., are held and firmly bound, unto E. F., in the penal sum of (here insert double the amount of the judgment and costs,)[20] dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Witness our hands and seals, this —— day of ——, 18—.

The condition of the above obligation is such, that whereas, the said E. F. did, on the —— day of ——, A. D. 18—, before ——, a justice of the peace in and for the county of ——, recover a judgment against the above bounden, A. B., for the sum of —— dollars; from which judgment the said A. B. hath taken an appeal to the district court of the county of —— aforesaid, and territory of Colorado: Now, if the said A. B. shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the court, upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

—— ——, [L. S.]
—— ——. [L. S.]

Approved by me, at my office, this —— day of ——, 18—.
—— —— J. P. [L. S.]

SEC. 40. The party desiring such appeal may file his bond in the office of the justice who shall have rendered the judgment, such bond to be approved by such justice, whose duty it shall be to suspend all proceedings in the case, and if execution shall have been issued, he shall recall the same, and shall, within twenty days[21] after receiving and approving of the appeal bond, file the same in the office of the clerk of the district court, together with all the papers and transcript of the judgment he has

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An appeal will lie from a judgment rendered upon an award. *Rogers* v. *Holden*, 13 Ill. 295.

Both parties may appeal; and if one only take such appeal, he may dismiss it, without the consent of the other. *Bacon* v. *Lawrence*, 26 Ill. 53.

The term "all cases," refers to actions brought for the redress of private injuries; all such cases are embraced, whether jurisdiction thereof is conferred by this, or other act. *Edwards* v. *Vandemack*, 13 Ill. 633.

(20) If the bond vary from the statute, in the penalty, it is still good as a voluntary bond. *Smith* v. *Whittaker*, 11 Ill. 417.

If the penalty in the bond be less than twice the amount of the judgment, the appeal will be dismissed, unless the appellant will file a sufficient bond. *Brown* v. *Keirns*, 13 Ill. 296.

(21) The failure of the justice to file the transcript and papers within the twenty days will not deprive the appellant of his appeal. The district court may upon application subsequently, require the justice to file his transcript; or in default of such application, may dismiss the appeal. *Little* v. *Smith*, 4 Scam. 400. *Ewing* v. *Bailey*, 4 Scam. 420.

given, with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

SEC. 41. Or the appealing party may file his bond in the office of the clerk of the district court[22] of the proper county, within the time aforesaid, which bond shall be approved by the clerk; upon the filing and approving of which bond, the clerk shall issue a *supersedeas*, enjoining the justice and constable from proceeding any further in said suit, and suspending all proceedings in relation thereto; and shall issue a summons to the appellee, to appear at the term of the court to which the appeal is returnable, which summons shall be served, and returned as in other cases.[23]

SEC. 42. So soon as the clerk shall issue a *supersedeas*, as aforesaid, the justice who gave the judgment and any constable in whose hands an execution or other process may be, in relation thereto, shall suspend all further proceeding thereon; and the said justice shall return all the papers, and a transcript of the judgment he had given, to the clerk of the said court with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

SEC. 43. One or more plaintiffs, or defendants, in causes decided by justices of the peace, shall be allowed the right of appeal to the district court without the consent of the others; and when one of several appeals, the *supersedeas* shall issue directing a suspension of all further proceedings upon the judgment, as though all had joined in the appeal.

SEC. 44. When an appeal bond shall be executed by one of several parties, from the judgment of a justice of the peace, the clerk of the district court shall issue a summons against the other parties, notifying them of the appeal in the said district court, and requiring them to appear, and abide and perform the judgment of the court in the premises, which summons shall be served as other process issued in appeal cases; and in case such summons shall be returned that parties are not found, the cause shall at the first term of the court be continued,[24] but at

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(22) The appeal bond need not be entered into before the clerk; nor does it require a formal approval from him; if he allow the appeal, and issue a *supersedeas*, he is presumed to have approved the bond. *Waldo* v. *Everett*, 1 Scam. 487.

(23) If the action be in the name of one to the use of another, the summons must issue against, and be served upon, the nominal plaintiff. *McCormick* v. *Fulton*, 19 Ill. 570.

The appellant cannot be compelled to proceed to a trial at the first term of the court, unless process has been served on the appellee, ten days before the term. *Hooper* v. *Smith*, 19 Ill. 53.

But where the appeal is taken, by filing bond with the justice, no summons is necessary; both parties are bound to follow the appeal; and the appeal may be dismissed, if the appellant fail to appear, on the very day of the docketing of the cause in the district court. *Allen* v. *The City of Monmouth*, 37 Ill. 372. *Boyd* v. *Kocher*, 31 Ill. 297.

(24) An appeal by one of several parties, cannot be disposed of at the first term without service of process upon those not appealing, or an appearance by them. *Hooper* v. *Smith*, 19 Ill. 53.

the second term shall be tried; the court shall have power to give the same judgment in the appeals taken under the preceding sections, as though all the parties to the judgment had joined in the appeal.

SEC. 45. If, upon the trial of any appeal, the bond required to be given shall be adjudged informal, or otherwise insufficient, the party who shall have executed such bond, shall in nowise be prejudiced, by reason of such informality or insufficiency: *Provided*, He will, in a reasonable time, to be fixed by the court, execute a good and sufficient bond.[25]

SEC. 46. Upon the trial of all appeals before the district court, no exception shall be taken to the form or service of the summons issued by the justice of the peace, nor to any of the proceedings before him; but the court shall hear and determine the cause in a summary way, according to the justice of the case, without pleading in writing.[26]

SEC. 47. If it shall appear, however, that the justice had no jurisdiction of the subject-matter of the suit, the same shall be dismissed, at the cost of the plaintiff.[27]

But on trial of an appeal by one of several defendants to an action of trespass: *Held*, that the plaintiff might dismiss his action, as to those defendants who did not appeal, even after verdict, and take judgment at the first term. *Flinn* v. *Barlow*, 16 Ill. 39.

Where one of several plaintiffs or defendants, appeal, the appeal should be docketed in his name only. *Micheltree* v. *Sparks*, 1. Scam. 198.

(25) See *Dedman* v. *Barber*, 1 Scam. 255. *Waldo* v. *Everett*, 1 Scam. 487. *Bragg* v. *Fessenden*, 11 Ill. 544. *Wear* v. *Killeen*, 38 Ill. 262.

(26) Where, in the summons, no year was specified, within which it should be returned: *Held*, That exception to this defect could not be made, for the first time on appeal. *Bines* v. *Proctor*, 4 Scam. 175.

When the defendant files his appeal bond, he thereby enters his appearance to the cause in the district court; and, by so doing, waives all defects in the process, the want of process, defects in the service, or want of service, before the justice. *Swingley* v. *Haynes*, 22 Ill. 216. *O. & M. R. R. Co.* v. *McCutchin*, 27 Ill. 11.

It is error to dismiss the appeal because judgment was rendered below against both defendants, where only one was served. *Stevens* v. *Cross*, 27 Ill. 36.

The district court cannot upon appeal allow an amendment which shall change the parties to the action. *Maxcy* v. *Padfield*, 1 Scam. 590. *Henckler* v. *County Court*, 27 Ill. 39.

But see *Shirtleff* v. *The People*, 2 Scam. 7.

(27) Upon the trial of the appeal, the jurisdiction of the justice is to be determined not by the plaintiff's account, but by the amount actually due the plaintiff as established by the evidence. *Rogers* v. *Blanchard*, 2 Gilm. 335. *Vaughn* v. *Thompson*, 15 Ill. 40. *Ballard* v. *McCarty*, 11 Ill. 501. *Hough* v. *Leonard*, 12 Ill. 456.

If the verdict of the jury, upon appeal, exceed the jurisdiction of the justice, the plaintiff cannot confer jurisdiction by remitting a portion of the verdict. *People ex rel.* v. *Skinner*, 13 Ill. 287.

It is error, upon appeal, to affirm the judgment of the justice without hearing evidence; if the appellant fail to appear, the appeal may be dismissed; otherwise the court can render judgment only upon hearing evidence. *Shook* v. *Thomas*, 21 Ill. 87.

Where, upon the trial of an appeal, it appears that by the accumulation of interest, the plaintiff's demand exceeds the statutory limits of the justice's jurisdiction, judgment may nevertheless be given for the full amount of the principal and such interest, provided the amount was at the beginning of the action, within the justice's jurisdiction. *Tindall* v. *Meeker*, 1 Scam. 138. *Micheltree* v. *Sparks*, 1 Scam. 199. *Revis* v. *Kumler*, 27 Ill. 293.

But, it was said in *C. B. & Q. R. R. Co.* v. *Menard*, that the judgment upon appeal, cannot exceed the amount indorsed, on the plaintiff's writ. 20 Ill. 9.

The plaintiff may, after appeal taken, dismiss his suit, even though the defendant obtained judgment below. *Shaffer* v. *Currier*, 13 Ill. 667.

Irregularities in taking the appeal, cannot be taken advantage of after the appearance term. *Mitchell* v. *Jacobs*, 17 Ill. 235.

SEC. 48. The plaintiff in the justice's court, shall be the plaintiff in the district court, on the trial of the appeal; and the rights of the parties, shall be the same as in original actions.

SEC. 49. The security in any appeal bond, shall be liable thereon for the amount of the original judgment and all costs thereon, in case the said appeal be dismissed; and shall be liable, also, on said bond, for whatever judgment may be rendered by the district court, in case the original judgment be affirmed by the said district court, either in whole or in part.

SEC. 50. Execution may issue out of the district court, on all judgments rendered in cases appealed, as in other cases originating in the district court.

SEC. 51. The judges of the district and probate courts shall have power, within their respective jurisdictions, and it shall be their duty, upon application made as hereinafter mentioned, to grant writs of *certiorari*, to remove causes from before justices of the peace into the district court,[28] who shall indorse an order for the same upon the petition of the party praying such writ; and on producing the same to the clerk of the district court, he shall issue said writ, in conformity to the provisions of this chapter.[29]

SEC. 52. No writ of *certiorari* shall issue, after the expiration of six months from the time of the rendition of judgment.[30]

SEC. 53. Before any writ of *certiorari* shall issue, the party applying therefor shall give bond, with security, in the same manner, and with the same condition, and the same where defective may be perfected, as bonds in cases of appeals from justices of the peace. The writ of *certiorari* shall require the justice to certify to the district court, a transcript of the judgment and other proceedings had before him, and in no case shall the justice be required to send up a minute or memorandum of the evidence given before him; but upon the return of said writ, such proceedings shall be had thereon as in cases of appeals.[31]

SEC. 54. The petition, on application for writs of *certiorari*, shall set forth and show, upon the oath of the applicant, that the judgment before the justice of the peace was not the result of negligence of the party praying for such writ, that the judgment, in his opinion, is erroneous and unjust, setting forth wherein the error and injustice consists, and that it was not in the power of the party to take an appeal in the ordinary way;

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(28) A writ of *certiorari* can issue only in those cases where an appeal lies. *Yunt* v. *Brown*, 1 Scam. 264.

(29) It is not essential that a writ of *certiorari* should issue, where the transcript, and accompanying papers, are filed in the district court, without such writ. *Gallemore* v. *Dazey*, 12 Ill. 146. *Stout* v. *Slattery*, 12 Ill. 162.

(30) If the petition be filed with the clerk within the six months, it is a compliance with the statute. 12 Ill. 146.

(31) The trial upon *certiorari*, is not upon the return of the justice, as upon the writ at common law; but *de novo*, as in a case brought up by appeal. *Gallemore* v. *Dazey*, 12 Ill. 146.

setting forth the particular circumstances which prevented him from so doing.[32]

SEC. 55. The justice of the peace, constables, and other persons concerned, shall, as soon as the writ of *certiorari* shall be served, stay all further proceedings in that case, until the further order of the district court.

SEC. 56. If the judgment of the justice shall be reversed by the district court, in whole or in part, such reversal shall not vitiate any sale on execution which shall have been effected before the issuing of the writ of *certiorari;* but in such cases, the district court shall have power to assess the damages which shall have accrued in consequence of such sale, and cause judgment to be entered, or a deduction made, therefor; and in all cases of a partial reversal of judgment, either in cases of appeals or *certiorari*, the court shall have power to apportion the costs between the parties according to justice.

SEC. 57. The personal property of every defendant, in a judgment before a justice of the peace, shall be bound for the payment of such judgment, from the delivery of the execution issued thereon to the constable; and the real property of such defendant shall be bound, as aforesaid, from the date of the filing of a transcript of the judgment in the clerk's office, as provided for in this chapter.

SEC. 58. Every constable to whom an execution shall be delivered, shall indorse on the back of the same, an exact memorandum of the day and hour when the same shall have come to his hands; and shall immediately proceed to levy the same, indorsing, also, on the back of the execution, the date of such levy, and making an exact inventory of the property on which the same shall have been levied; and shall appoint a day and hour for the sale of such property, giving ten days' previous notice of such sale, by advertisement, in writing, to be posted up at three public places in the county; and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest and costs, to the highest bidder.

SEC. 59. Any constable shall be authorized to remove property levied on by him, when it shall be necessary for safe-keeping of the same: *Provided*, That if the defendant shall desire to retain the property so levied on, until the day of sale, it shall be

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(32) It is not sufficient, that the petition merely *allege* that the judgment was not the result of negligence, etc.; but it must set forth facts from which the court can for itself determine this. *Russell* v. *Pickering*, 17 Ill. 31; *Clifford* v. *Waldrop*, 23 Ill. 336. *Harrison* v. *Chipp*, 25 Ill. 578.

And as to what facts are deemed sufficient to warrant the writ, see *Ibid. Cushman* v. *Rice*. 1 Scam. 565. *Hoare* v. *Harris*, 14 Ill. 36. *White* v. *Frye*, 2 Gilm. 68. *Gallemore* v. *Dazey*, 12 Ill. 144. *Lord* v. *Burke*, 4 Gilm. 363.

The petition must stand upon its own merits; it cannot be supported by extraneous affidavits. *Davis* v. *Randall*, 26 Ill. 244. *Harrison* v. *Chipp*, 25 Ill. 579.

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TERRITORY OF COLORADO, } ss.
———— County, }

A. B. vs. C. D.

Demand $——.

I, E. F., do enter myself security for all costs that may accrue in the above case, this —— day of ——, 18—.

E—— F——. [L. S.]

SEC. 63. Such bond shall be signed by the security, and if the said plaintiff shall be defeated in his suit, discontinue or make default, and shall not, within ten days thereafter, pay to the justice all costs that may have been occasioned to the defendant, to the justice, and constable, jurors or witnesses, the justice shall issue his execution against the security, for the amount thereof, accompanied by a bill of costs, in which shall be set down every particular charge. And if any suit shall be commenced by a non-resident, as aforesaid, without filing a bond for costs, as aforesaid, the suit shall be dismissed on the motion of the defendant, and the plaintiff shall be liable to pay all costs occasioned thereby, and execution may issue therefor as in other cases.

SEC. 64. When any defendant shall evade the service of process, and not listen to the same, or secrete himself, then the officer shall serve the same by leaving a copy at his place of residence, with some white person of the age of ten years or upwards, and in all such cases, the constable shall make a special return when and how served, and the circumstances attending the same; and if the justice shall be satisfied that the defendant evaded the service by reading, and that the party is sufficiently notified and summoned, he shall proceed to hear and determine the case.

SEC. 65. Any justice of the peace may appoint a suitable person to act as constable in a criminal or other case, where there is a probability that a person charged with an indictable offence will escape, or that goods and chattels will be removed, before application can be made to a qualified constable, or whenever no qualified constable can conveniently be found in the township; and the person so appointed, shall act as constable in that particular case and no other; and any temporary appointment so made, as aforesaid, shall be made by a written indorsement, under the seal of the justice deputing, on the back of the process which the person receiving the same shall be deputed to execute.[34]

SEC. 66. It shall be the duty of every constable, when any

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(34) If the appointment be not in strict conformity to the statute, it confers no power or authority upon the person appointed; it must be under the hand and seal of the justice, and indorsed upon the process, and, it seems that it should set forth the existence of the cause for which such appointment is authorized by the statute. *Gordon v. Knapp*, 1 Scam. 489.

felony or breach of the peace shall be committed in his presence, forthwith to apprehend the person committing the same, and bring him before some justice of the peace, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and also to serve and execute all warrants, writs, precepts, and other process, to him lawfully directed; and, generally, to do and perform all things appertaining to the office of constable within this territory.

SEC. 67. When any person shall be about to commence an action of trover, or trespass, before a justice of the peace, and he shall make oath[35] before such justice, that he verily believes that the benefit of whatever judgment may be recovered in such action, will be in danger of being lost, unless the defendant or defendants be held to bail, upon such oath being made, the justice shall issue a warrant for the apprehension of the defendant; and the defendant may release his body, by entering into a bond, with one or more sufficient securities, to be approved by the justice, conditioned to pay any judgment which may be recovered against him.

SEC. 68. Upon all judgments in actions of trespass, or trover, the justice may issue an execution against the goods and chattels, or body, of the defendant, at the election of the plaintiff.

SEC. 69. In all cases of assault, assault and battery, and affrays, any justice of the peace may, upon his own knowledge, or upon the oath of any competent person, issue his warrant, to any constable of his county, for the arrest of every person charged with either of said offences; and upon the arrest of such person, shall cause a jury to be summoned, unless the party accused shall dispense with a jury, who shall hear the cause, and if they find the accused guilty, shall assess such fine as they shall deem just; not, however, to be less than three, nor more than one hundred dollars.

SEC. 70. Upon the jury returning their verdict of guilty, and the assessment of the fine, the justice shall record the same in his docket, or record book, and proceed to render judgment thereon, for the amount of said fine and costs; but if the jury return a verdict of not guilty, the justice shall record the same, and discharge the defendant or defendants, without costs.

SEC. 71. Upon the rendition of such judgment, the justice shall issue execution for the fine and costs, which may be levied upon any personal property of the defendant or defendants; which shall be sold for whatever it will bring in cash, after giving notice as in other cases: *Provided, however*, That if the party so convicted have a family, then the constable shall reserve

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(35) A written affidavit is unnecessary. *Outlaw* v. *Davis*, 27 Ill. 470.

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purpose of avoiding trial, in which case he shall be tried at any time within twelve months after his return or apprehension.

SEC. 78. It shall be the duty of each of the justices of the several counties, to return, quarterly, to the county treasurer thereof, a list of all fines before them assessed, stating the name or names of the defendant or defendants, and to pay over to said county treasurer any and all money by him received, arising from fines by him received, and a failure of any such justice before whom any fine shall have been assessed or paid, under the provisions of this chapter, to make such returns, shall work a forfeiture of double the amount of the fines assessed before them, to be recovered as prescribed in the succeeding section.

SEC. 79. The constable charged with the collection of any such fine, shall account for and pay over to the justice of the peace imposing the fine, all moneys which he may have collected, immediately; and upon failure to do so, he shall forfeit and pay double the amount of money so received, to be recovered in the name of the county treasurer of the proper county, for the use of the county, in any court having jurisdiction thereof; the constable shall also be authorized to receive all fines before execution issued, and shall account therefor, and pay over the same, in the same manner and under the same penalties as before provided.

SEC. 80. In all criminal prosecutions before a justice of the peace, where the party accused shall be found not guilty, and it shall appear to the justice before whom such case shall be tried, that there was no reasonable ground for his prosecution, and that it was maliciously entered, in such case, the justice of the peace is hereby authorized to give judgment against the complainant, for the costs of said suit, and issue execution thereon.

SEC. 81. When the docket and papers of any justice of the peace shall be transferred to any other justice of the peace, as provided in the next section of this chapter, such justice receiving the same, may proceed to the completion of all unfinished business, the issuing of executions upon judgments remaining unsatisfied upon said docket, and collect the same; and shall have the same power in respect of such docket, and papers, as if the same pertained to proceedings originally instituted before him.

SEC. 82. When any justice of the peace shall resign his office, or remove from the county or district in which he was elected, it shall be his duty to deliver his docket, and papers relating to the business transacted before him, to the nearest justice of the peace of his county, and to return to the office of the clerk of the county all copies of the statutes which he may

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tice of the application, and recover the amount so neglected or refused to be paid, with twenty per cent. damages thereon, for such detention; and shall have execution therefor.

SEC. 87. If any justice, or constable, against whom proceedings shall have been commenced, as provided in the preceding section, shall pay or satisfy the amount claimed by the party prosecuting, with the costs, the proceedings shall be dismissed, without judgment for the damages specified in the preceding section.

SEC. 88. If any constable shall neglect or fail to return an execution within ten days after its proper return day,[37] or if the demand, debt or claim be wholly or in part lost, or if any special damages shall arise to any party by reason of the neglect or refusal to act, or the misfeasance or nonfeasance of any constable, in the discharge of any official duty, the party aggrieved may have his action in the district court, or, when the amount claimed does not exceed three hundred dollars, before any justice of the peace, of the proper county, against such constable and his securities on the official bond of such constable, and shall recover thereon the amount of said execution, with interest from the date of the judgment, upon which the original execution issued.

SEC. 89. In suits on the official bonds of justices of the peace and constables, a copy of such bond, authenticated under the official signature and seal of the clerk of the county with whom it is filed, may be read in evidence.

SEC. 90. When judgment shall have been rendered against any justice of the peace, or constable, and his securities on his official bond, execution may issue against all of them; but the officer executing the same, shall not levy upon the property of the securities, until he shall fail to find sufficient property of the justice of the peace, or constable, to satisfy such execution: *Provided, however*, The execution shall be a lien on the property of the securities, as in other cases.

SEC. 91. In all cases of suits on the official bonds of justices of the peace and constables, judgment shall be entered for the full penalty of the bond in favor of the people of the territory of Colorado; but execution shall only issue for the amount found to be due, with interest and costs.

SEC. 92. After such judgment is obtained, the court may, from time to time, award execution against the defendant or defendants for any breach of the conditions of their bond, or

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(37) A constable to whom execution has issued, may, in the lifetime of the writ, turn the same over to any other constable of the same county; but he will still remain liable, if the execution be not returned within the statutory period. *County Court of Calhoun Co.* v. *Buck*, 27 Ill. 443.

An execution cannot be renewed or extended by indorsement thereon; nor can a second execution issue until the return of the first. *Ibid.*

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pear that the defendant has not been personally served, and no appearance be entered for him, the justice shall continue the case ten days, and immediately cause a notice to be posted up in three public places in the neighborhood of the justice, directed to the defendant, stating that an attachment has been issued and levied, at whose instance, the amount claimed to be due, and the time and place of trial; and also stating that unless the defendant shall appear at the time and place fixed for trial, judgment will be entered by default, and the property attached, ordered to be sold to satisfy the same.

SEC. 100. When notice shall be given, as required by the preceding section, the justice shall proceed to hear and determine the cause as though process has been personally served upon the defendant; and if judgment be given against the defendant, shall order a sale of the property attached, or so much thereof as will satisfy the judgment and costs of suit.

SEC. 101. The right of property may be tried, and appeals taken, under the provisions of the four preceding sections, as in ordinary cases, and the same are to be construed in the most liberal manner, in all courts, for the detection of fraud.

SEC. 102. Justices of the peace, in their respective counties, shall have jurisdiction in actions of replevin, where the value of the property sought to be replevied, and the damages claimed, do not exceed three hundred dollars.

SEC. 103. Suit shall be commenced before justices, in the township in which the debtor or person sued resides, unless the cause of action occurred in the township in which the plaintiff resides, in which case the suit may be commenced where the cause of action accrued or is specifically made payable.

SEC. 104. If no justice of the peace shall reside in the township in which the defendant resides, or in which the cause of action accrued, the suit shall be brought before the justice of the peace nearest to the residence of such debtor within the county.

SEC. 105. Plaintiffs shall in all cases be allowed a change of venue, in the same manner as is now provided by law for defendants.

Prior Statutes Repealed. An act concerning Justices of the Peace and Constables. Approved October 31, 1861. Laws 1861, p. 220.

An act concerning Probate Courts and Justices of the Peace in certain Counties. Approved March 11, 1864. Laws 1864, p. 117.

An act to amend an act entitled An act concerning Justices of the Peace and Constables. Approved January 11, A. D. 1867. Laws 1867, p. 67.

An act amendatory of an act entitled An act concerning Justices of the Peace and Constables. Approved August 15, 1862. Laws 1862, p. 76.

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SEC. 6. (II.) That all acts and parts of acts inconsistent with this act, be and the same are hereby repealed.

SEC. 7. (III.) This act shall take effect and be in force from and after its passage.

ARTICLE II. APPORTIONMENT.

SECTION 1. The first council district shall be as follows: Boulder, Larimer and Weld counties; shall be entitled to one councilman.

SEC. 2. The second council district shall be as follows: Arapahoe and Douglas counties; shall be entitled to two councilmen.

SEC. 3. The third council district shall be as follows: Gilpin county; shall be entitled to three councilmen.

SEC. 4. The fourth council district shall be as follows: Clear Creek and Jefferson counties; shall be entitled to one councilman.

SEC. 5. The fifth council district shall be as follows: Park county; shall be entitled to one councilman.

SEC. 6. The sixth council district shall be as follows: Summit county; shall be entitled to one councilman.

SEC. 7. The seventh council district shall be as follows: Lake county; shall be entitled to one councilman.

SEC. 8. The eighth council district shall consist of Pueblo, El Paso, Huerfano, Fremont and Las Animas counties; shall be entitled to one councilman.

SEC. 9. The ninth council district shall consist of Costilla and Saguache counties; shall be entitled to one councilman.

SEC. 10. The tenth council district shall consist of Conejos county; shall be entitled to one councilman.

SEC. 11. The first representative district shall include the counties of Weld and Larimer, and shall be entitled to one representative.

SEC. 12. The second representative district shall include the counties of Arapahoe and Douglas, and shall be entitled to four representatives.

SEC. 13. The third representative district shall include the county of Boulder, and shall be entitled to one representative.

SEC. 14. The fourth representative district shall include the county of Jefferson, and shall be entitled to one representative.

SEC. 15. The fifth representative district shall include the counties of Boulder and Gilpin, and shall be entitled to one representative.

SEC. 16. The sixth representative district shall consist of the county of Gilpin, and shall be entitled to four representatives.

SEC. 17. The seventh representative district shall include the

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rooms provided by the territory for the treasurer. It shall be the duty of the librarian to keep said rooms open from the hour of ten o'clock a. m., until twelve o'clock m., and from two o'clock p. m. until four o'clock p. m., on each day throughout the year, Sundays and holidays excepted.

SEC. 2. The librarian shall have the charge and custody of all books, maps, papers, charts, engravings, paintings, and all other things properly belonging to the library, or directed to be deposited therein; and shall also keep a regular file of all newspapers, published in the territory, which shall be donated thereto.

SEC. 3. It shall be the duty of the librarian, to receive and transfer all books or documents, sent by other states or territories to the territorial library, from the post-office or other depot, to which they may have been consigned, and to properly label and arrange them in the library.

SEC. 4. The territorial librarian shall cause the receipt of each book, map or other document, that may come into his possession, to be acknowledged; and he shall keep a record of all books and documents so received, and report the same, as provided by law.

SEC. 5. The librarian shall have full power to make any rules and regulations, proper and necessary for the preservation and increase of the library, not inconsistent with the law, which the librarian shall, in all things, observe; and to superintend and direct all expenditures of appropriations made for the library.

SEC. 6. The librarian shall control the sale of the reports of the supreme court, and extra copies of statutes, and other documents not otherwise appropriated, or advisable to be preserved and kept in the library.

SEC. 7. The librarian is hereby directed, to exchange statutes, journals, legislative documents, and other books, with other legislative bodies, and libraries, as he shall deem proper.

SEC. 8. All persons shall be permitted to visit the library and examine and read the books therein, and may take out any book and retain the same for three weeks, by depositing a sum of money equal to double the value of the book, with the librarian, which sum shall be returned to the owner on the return of the book. Members and ex-members of the legislative assembly, judges of the supreme court, district and probate courts, officers of the territory and their clerks, actually engaged in the service of the territory, and clerks and sergeants-at-arms of the legislative assembly, shall have free access to the use of the books of the library, and have the liberty of taking the same out, under such regulations as the librarian may determine; but no public officer, or other person, having the right to take

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CHAPTER LIII.

LICENSES.

SECTION
1. No auctioneer, pedler, etc., to vend any merchandise without a license; this not to extend to any person selling produce, provisions or miners' tools.
2. County commissioner; have power to grant licenses; to fix sum to be paid therefor.
3. License to be for one year.
4. Clerk to grant permit when commissioners not in session; to expire at next session of commissioners.
5. County commissioners to examine and approve or disapprove said permit granted by clerk; in case of disapproval, permit vacated.
6. Any person keeping store, or selling merchandise without license, to pay penalty.
7. Preceding section not to extend to merchants who pay annual tax on merchandise, nor to persons who vend commodities manufactured or raised by them in this territory.
8. County commissioners may license hotels, saloons, groceries; conditions; applicant to give bond.
9. Commissioners may grant or reject applications for license to keep grocery or saloon.
10. May revoke any such license.

SECTION
11. License to keep saloon or grocery, not to authorize party to sell liquors in more than one place; license to describe place or house; trustees of incorporated towns have exclusive power to license groceries.
12. Saloon or grocery defined.
13. Penalty for selling liquor without license.
14. Penalty for selling liquor to Indians.
15. Person permitting disorder, drunkenness or gaming in his house, to have his license suppressed.
16. Agents of foreign insurance companies to signify acceptance of appointments to county clerk.
17. Penalty for carrying on business without license, where license required by law.
18. This chapter to include theatres and shows, where an admission fee is charged; no such place of amusement to be opened on the Lord's day; penalty.
19. Officer collecting fines under this chapter to pay same into county treasury.
20. Informers competent witnesses.
21. Penalties how recovered; how disposed of.
22. Appeal allowed from proceedings under the provisions of this chapter.

SECTION 1. No auctioneer, pedler or other person or persons, company or corporation, shall be permitted to sell, vend, or retail, either at private sale or public auction, any goods, wares, or merchandise, without first having obtained a license for that purpose, as hereinafter provided. *Provided, however*, That this section shall not extend to any person selling produce, provisions, or mining tools.

SEC. 2. The county commissioners of the respective counties in this territory, shall have power to grant such licenses on the payment into the county treasury, by the applicant for such license, of a sum, to be assessed by said commissioners, not less than five, nor more than one hundred dollars.

SEC. 3. Such license shall authorize the person receiving it, to vend, sell and retail, goods, wares and merchandise, within said county, for the space of one year from the time of granting the same.

SEC. 4. If the board of county commissioners shall not be in session when the application is made, the clerk of the county may grant a written permission to the applicant, to vend, sell and retail goods, wares and merchandise, until the end of the next session of the board of county commissioners; or, if said board take no action upon the case, for the term provided in the third section of this chapter. At the time of granting such license, the clerk may assess the amount to be paid by the applicant; which shall be paid into the county treasury accordingly.

SEC. 5. When a permission shall be granted by the clerk, in vacation, as aforesaid, it shall be the duty of the board of county commissioners, at their next meeting thereafter, to examine such permit, and if approved, to proceed forthwith to assess the amount to be paid for licenses, to be paid as in the case of original applications. But if the board of commissioners do not approve the same, the license shall be vacated, and no other sum shall be required to be paid than fixed by the clerk.

SEC. 6. If any person or persons, company or corporation, shall, directly or indirectly, keep a store, or sell, vend, or retail any goods, wares or merchandise, without being first duly authorized by license or permit, as aforesaid, such person or persons, company or corporation, so offending, shall forfeit and pay any sum not exceeding one hundred dollars, nor less than ten dollars.

SEC. 7. The preceding section shall not be construed to extend to the sale of goods, wares, or merchandise by merchants who pay an annual tax upon merchandise, assessed according to the revenue laws of this territory, nor to persons who sell commodities manufactured or raised by themselves in this territory.

SEC. 8. The board of county commissioners may grant licenses to keep saloons, hotels, public houses, or groceries, upon the following conditions, to wit: *First*, The applicant shall pay into the county treasury, for the privilege granted, a sum not exceeding three hundred dollars, nor less than twenty-five dollars, in the discretion of the board. *Second*, The applicant shall execute bond in the penalty of five hundred dollars, with one or more securities, to be approved by the board, conditioned that the applicant will keep an orderly house, and that he will not permit any unlawful gaming, or riotous conduct in his house.

SEC. 9. Upon application for licenses to keep saloons or groceries, the board may reject or grant the same, in their discretion.

SEC. 10. The board of county commissioners shall have power, upon complaint being made to them, to revoke any license granted to keep a saloon or grocery, whenever they may be satisfied that the privileges granted have been abused, or that the person to whom the license was granted has violated the law.

SEC. 11. Licenses granted to keep saloons or groceries, shall not authorize the persons obtaining the license to vend or sell spirituous or vinous liquors in more than one place or house; and every license shall describe the house and place intended to be occupied. The board of trustees, or common council, of every incorporated town or city, shall have exclusive authority to license saloons, groceries, and all places wherein spirituous, vinous, malt, or other intoxicating liquors are sold by quantities less than one quart.

SEC. 12. A saloon or grocery shall be deemed to include all places where spirituous or vinous liquors are sold by quantities less than one quart.

SEC. 13. Every person not having a legal license to keep a saloon or grocery, who shall barter, sell, exchange, or otherwise dispose of for his gain or benefit, any vinous, spirituous, or mixed liquors, in less quantities than one quart, or shall permit the same to be done on his or her premises, for his or her benefit or gain, shall forfeit and pay the sum of twenty dollars for each offence, together with costs of suit; one half to any person who shall give information, the other half to be paid into the county treasury.

SEC. 14. No retailer of spirituous liquors, or other person or persons, shall sell, exchange, or otherwise deliver, to any Indian or Indians, within the boundaries of this territory, any spirituous liquors, under the penalty of fifty dollars for every such offence; the one half thereof for the use of the county wherein the offence is committed, and the other half for the person informing.

SEC. 15. Every person licensed to keep a saloon or grocery, who shall knowingly suffer any disorder, drunkenness or unlawful games, whatsoever, in his, her, or their house, his, her, or their license or licenses shall be suppressed by the board of county commissioners.

SEC. 16. All agents of foreign insurance companies shall, upon their acceptance of such agencies, signify the same in writing, to the clerk of their respective counties; which notice shall be filed by the clerk in his office; which shall entitle the agent to grant policies of insurance, according to the laws governing the company of such agency.

SEC. 17. If any person carry on or transact any business or occupation without license therefor, when such license is required by any law of this territory, he shall, on conviction thereof, be fined in a sum not exceeding three hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

SEC. 18. This chapter shall extend to and include all theatres, circuses, and shows, where an admission fee is charged for entrance thereto. No person shall be allowed by virtue of any such license to open any place of public amusement, such as a theatre, circus, or show, on the Sabbath or Lord's day; but any person who shall so offend on such day, shall be fined in a sum not less than fifty, nor more than one hundred dollars, for every such offence.

SEC. 19. Every magistrate, or other officer, to whom any fines or penalties, imposed by this chapter, shall be paid for the use of the county, shall, at the next meeting of the board of county commissioners, make a report of the amount thereof, and pay the same into the county treasury.

SEC. 20. Persons prosecuting or giving information, under the provisions of this chapter, may be competent witnesses on the trial, notwithstanding their interest in the penalty to be recovered.

SEC. 21. Penalties incurred by a violation of the provisions of this chapter, may be recovered by action of debt, or by indictment in the name of the people of the territory of Colorado, for the use of the proper county, before any justice of the peace or court of competent jurisdiction, of the proper county, upon complaint of any citizen of such county; and any justice of the peace or other officer, into whose hands such penalty shall properly come, shall unless otherwise required by law, make report of such recovery to the board of county commissioners; and at the next regular meeting succeeding, the collector of such penalty shall pay into the county treasury the part thereof which shall be payable to such county, and the remainder to the person informing or prosecuting.

SEC. 22. Appeals, and writs of *certiorari*, may be taken from proceedings had under the provisions of this chapter, as in other cases.

Prior Statutes Repealed. An act concerning licenses. Approved November 6, 1861. Laws 1861, p. 69.

An act to amend An act concerning licenses. Approved August 15, 1862. Laws 1862, p. 78.

An act amendatory of an act entitled An act concerning licenses. Approved August 14, 1862. Laws 1862, p. 79.

An act to amend An act concerning licenses. Approved February 9, 1866. Laws 1866, p. 66.

CHAPTER LIV.

LIENS.

SECTION

ARTICLE I.—*Mechanics' Lien.*

1. Party performing labor in erection of building, or furnishing material for same, by contract with owner of land, has a lien for the amount due him, on the whole tract of land.
2. Lien to extend to all work done, and material furnished: whether contract express or implied.
3. Lien enforced by petition.
4. What petition shall state; summons to issue thereon.
5. Court has the powers of a court of chancery; several claimants or creditors may unite in the same petition.
6. Suits to be placed on common-law docket; summons how served; cause continued if summons not served ten days before term.
7. Answer under oath.
8. When defendant to answer; oral testimony to be received as in cases at law.
9. Notice may be given by publication, under direction of the court.
10. All persons interested may become parties at any time before final judgment.
11. No preference between creditors.
12. Court to ascertain amount due each creditor and apportion proceeds of sale.
13. Where mechanic has failed to perform his part of contract, by reason of failure of the owner of land, to have reasonable compensation for so much as he has performed.

SECTION
14. In what case court may order a part of the premises to be sold.
15. Parties whose claims are not due, may become parties to suit, and have claims allowed with a rebate of interest.
16. Issues of law and of fact to be tried separately; want of preparation for trial in one claim not to delay others: *Proviso.*
17. Person having a less estate than an estate in fee-simple, to be considered, nevertheless, the owner; lien to bind his estate as a mortgage.
18. Suits may be instituted in favor of executors and administrators, and against representatives of those against whom cause of action accrued.
19. Parties may contest each other's rights.
20. Encumbrances; how affected by lien.
21. Parties in interest; who.
22. Claimants may contest validity of encumbrances; fraudulent encumbrances may be set aside.
23. Proceedings governed by rules of proceeding in chancery.
24. Suit to be instituted in six months after last payment becomes due, or claimant barred as to other creditors.
25. Creditors may maintain an action at law, notwithstanding lien.
26. If proceeds of sale insufficient to pay amount of lien, execution to issue for remainder; surplus how disposed of.
27. Costs; how apportioned.

ARTICLE II.—*Miners' Lien.*

1. Any person furnishing labor or material for development of mine, by contract with owner, lessee, or agent of owner, to have a lien therefor.
2. Miners' liens enforced in same manner as the mechanic's lien.

ARTICLE III.—*Liens upon Personal Property.*

1. Ranchman, agistor, etc., to have a lien on stock left with him, for the feeding and pasture thereof; not to apply to stolen stock.
2. Common carriers and warehousemen have a lien upon goods carried or stored by them for their storage and carriage, and for usual and reasonable advances.
3. Mechanic manufacturing or repairing any article of personal property to have a lien on the same for his labor and material furnished and used.
4. If charges not paid in ninety days after becoming due, mechanic, carrier, etc.; may apply to any justice to appoint appraisers.
5. Appraisers to be sworn to make appraisement, and return same to justice.
6. After appraisement, the mechanic, carrier, etc., may, after giving ten days' notice, sell property; proceeds how disposed of.
7. Sale not to be made for less than two thirds appraised value of property; sale in violation of this section, void.
8. The mechanic, carrier, etc., may become purchaser at such sale.
9. Sale may be adjourned from day to day by public outcry.
10. Nothing herein to take away right of action of lien creditor.
11. Lien creditor may appoint clerk and crier at sale.
12. Fees of appraisers, clerks, criers, etc.

SECTION 1. Any person who shall, by contract with the owner of any piece of land, town-lot, lode-mining-claim, water-claim, or other premises, furnish labor or materials for erecting, or repairing any building, or the appurtenances belonging to any building, or any fence, flume, or the timbering, or ladder-way to any mine or shaft, on such land, lode, mining-claim, water-claim or premises, shall have a lien upon the whole tract of land, town-lot, lode, mining-claim, water-claim, or premises, in the manner herein provided, for the amount due to him for such labor or materials.[1]

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(1) A contract with one not the owner, but who, with the knowledge of, and without objection from, the real owner, represents himself to be such, will give the mechanic his lien. *Donaldson* v. *Holmes*, 23 Ill. 85.

If the contract be made with several parties, one of whom is the owner of the premises, it is sufficient. *Van Court* v. *Bushnell*, 21 Ill. 624. *Roach* v. *Chapin*, 27 Ill. 194.

It makes no difference whether the contract is entered into within or beyond the territory; it is the actual performance of the labor, or the use and application of the materials to the improvement of the premises, which gives the lien. *Gaty* v. *Casey*, 15 Ill. 192. *McLagan* v. *Brown*, 11 Ill. 526. *Williams* v. *Chapman*, 17 Ill. 423.

If the materials have not been actually used for the improvement of the premises sought to be charged, the statute gives no lien. *Hunter* v. *Blanchard*, 18 Ill. 318.

Unless the contract under which the materials are furnished, or labor performed, has reference to the improvement of a particular tract of land, the statute gives no lien; a contract to furnish an engine and boiler, and to set the same up, nothing being said as to where, will give no lien upon the lot upon which the engine is afterwards erected. *Burkhart* v. *Reisig*, 24 Ill. 531. *Hill* v. *Bishop*, 25 Ill. 350.

One who furnishes machinery to be erected, and which was afterwards erected in a mill, in progress of erection at the date of the contract, has his lien under the statute, although the contract fail to specify the premises upon which the machinery is to be erected. *Powers* v. *McCord*, 36 Ill. 220.

If it be shown that the materials were furnished by contract with the owner of the premises, and

SEC. 2. The lien shall extend to all work done and materials furnished, under the provisions of the contract, whether the kind or quantity of the work or materials, or the time of completing or furnishing the same, or the amount to be paid therefor, or the time of payment, be specified in such contract or not.

SEC. 3. Where any sum due by such contract shall remain unpaid, after the same is payable, the creditor may, upon bill or petition to the district court of the county in which the land, lot, lode, mining-claim, water-claim, or other premises, or any part thereof lies, obtain an order for the sale thereof, and for applying the proceeds of such sale to the discharge of his demand; and the filing of the bill or petition in the clerk's office, and suing out a summons thereon, shall be deemed the commencement of the suit.

SEC. 4. The bill or petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises which are subject to the lien, and all other material facts and circumstances necessary to a full understanding of the rights of the parties,[2] and shall be considered as the foundation of plaintiff's action; and upon the filing of which with the clerk, a summons shall issue thereon, against all persons and parties, as required upon filing bills in chancery.

SEC. 5. For the purpose of bringing all parties in interest before the court, the court shall have power to permit amendments to any part of the pleadings, and to issue process, make all orders requiring parties to appear and requiring notice to be given by publication in newspapers, that are or may be authorized in proceedings in chancery; and the court shall have the same power and jurisdiction over the parties and subject, that are or may be conferred upon courts in chancery, in respect to proceedings before that court; and where there are several creditors claiming liens upon the same premises, by virtue of distinct contracts, as many such creditors as may desire so to

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were actually used upon the premises in the improvement thereof, the jury may properly infer that they were contracted and furnished for that purpose. *Ibid.* *Martin* v. *Eversal*, 36 Ill. 224.

The mechanic cannot institute his petition until the completion of his contract; nor until the money is due. *Kenney* v. *Hudnut*, 2 Scam. 472.

The destruction of the building by fire, or the severance of the materials, will not destroy the lien upon the land. *Gaty* v. *Casey*, 15 Ill. 192. *Smith* v. *Moore*, 26 Ill. 394.

Equity will treat the money received for machinery which is furnished for, and put into a mill, and is afterwards severed and sold, as subject to the furnisher's lien, in the hands of the party who converted the machinery. *Ibid.*

The statute is in derogation of the common-law, and will not be extended to cases falling within the reason, but not within the words of the statute. *Brady* v. *Anderson*, 24 Ill. 112. *But see* *Williams* v. *Chapman*, 17 Ill. 425.

(2) As to the requisites of the petition, see *Muller* v. *Smith*, 3 Scam. 544. *Turney* v. *Sanders*, 4 Scam. 534. *Warren* v. *Harris*, 2 Gilm. 309. *Quackenbosh* v. *Carson*, 21 Ill. 99. *Cook* v. *Heald*, 21 Ill. 425. *Cook* v. *Vreeland*, 21 Ill. 431. *Cook* v. *Rofinot*, 21 Ill. 437. *Burkhart* v. *Reisig*, 24 Ill. 529. *Strawn* v. *Cogswell*, 28 Ill. 457. *Kinzey* v. *Thomas*, 28 Ill. 502.

do, may unite as claimants or petitioners in the same bill or petition, for the enforcement of their several liens; and the court may, upon the final hearing, decree and enforce the lien given hereby, in favor of such creditors as shall by the proofs appear entitled thereto, and may dismiss the bill or petition as to others of such complainants or petitioners.

SEC. 6. Suits instituted under the provisions of this article, shall be placed upon the common-law docket, and shall stand for trial at the term of the court to which the summons is made returnable. The summons shall be served by the sheriff, as other process; but if not served ten days before the return-day thereof, the cause shall be continued, unless the parties agree to a trial at that term of court.

SEC. 7. Defendants, in proceeding under this article shall answer the bill or petition under oath; and the plaintiff shall except or reply to the answer, as though the proceeding was in chancery; the answer shall be regarded as the plea of the defendant, and by the replication thereto, an issue or issues shall be formed, which shall be tried by the court, or jury, as the court may direct, or the parties agree.

SEC. 8. Every defendant served with process ten days before the return-day thereof, shall answer the bill or petition on or before the first day of the term; and the issue or issues in the case shall be made up under the direction of the court, and oral testimony shall be received as in cases at law.[3]

SEC. 9. Notice given to parties by publication in newspapers, under the direction of the court, shall be equivalent to personal service of such notice.

SEC. 10. In proceedings under this article, all persons interested in the subject-matter of the suit, or in the premises intended to be sold, may, on application to the court wherein the suit is pending, become parties at any time before final judgment.[4]

SEC. 11. Upon questions arising between different creditors, no preference shall be given to him whose contract was first made.

SEC. 12. Upon the trial of causes under the provisions of this article, the court shall ascertain the amount due each creditor,

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(3) The pendency of a motion for a rule upon the complainant to show cause why security for costs should not be given, will not relieve the defendant of the necessity of filing his answer within the time limited by statute. *Hamilton* v. *Dunn*, 22 Ill. 260.

After the expiration of the first day of the term, it is in the discretion of the court to allow an answer to be filed. *Ibid.*

(4) Defendants claiming liens, must, by answer or cross-bill, set up and show particularly the facts upon which such lien is claimed. *Sutherland* v. *Ryerson*, 24 Ill. 521.

One who is made defendant to the petition may perhaps assert and claim a lien, by answer; if not made defendant, it seems that a bill of interpleader is the proper course. *Powers* v. *McCord*, 36 Ill. 220.

and shall direct the application of the proceeds of the sales to be made to each, in proportion to their several amounts.

SEC. 13. When the owner of the land shall have failed to perform his part of the contract, and by reason thereof the other party shall, without his own default, have been prevented from performing his part, he shall be entitled to a reasonable compensation for as much thereof as he has performed, in proportion to the price stipulated for the whole; and the court shall adjust his claim accordingly.[5]

SEC. 14. If any part of the premises can be separated from the residue, and sold without damage to the whole, and if the value thereof shall be sufficient to satisfy all the claims proved in the cause, the court may order a sale of that part.

SEC. 15. Parties entitled to liens under the provisions of this article, whose claims are not due or payable at the time of the commencement of suit by any other party, shall be permitted to become parties to the suit, and their claims shall be allowed, subject to a reduction of interest from the date of judgment to the time such claim is due or payable.

SEC. 16. In cases under the provisions of this article, where there are several claimants, the issue of law and fact, or either, may be tried separately, and in no case shall the want of a preparation for trial, to one claim, delay the trial in respect to others; but trials shall be had upon issues between such parties as are prepared, without reference to issues between other parties; and when one creditor shall have obtained a verdict or judgment for the amount due, the court may order a sale of the premises on which the lien operates, or a part thereof, so as to satisfy the judgment: *Provided*, That this shall not apply to the case of several petitioners uniting in one petition as provided in section five, but the claims of all such petitioners shall be adjudicated at the same hearing: *And provided, further*, That the court may, for good cause shown, delay making any order of sale, until the rights of all parties interested shall be ascertained and settled by the court.[6]

SEC. 17. If the person who procures work to be done, or materials furnished, has an estate for life only, or any other estate less than a fee-simple, in the land, lot, lode, mining-claim, water-claim, or other premises on which the work is done, or mate-

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(5) A failure to pay the consideration money as the work progresses, is not such an act or omission as to prevent the mechanic from performing his part of the contract, in the sense of the statute, unless such payment is made a condition precedent by the terms of the statute. *Kenzie* v. *Sherman*, 28 Ill. 523.

(6) There is no redemption from a sale upon decree made in a proceeding to enforce a mechanic's lien. *Armsby* v. *The People*, 20 Ill. 155.

The decree should allow a reasonable time for payment before sale; in no case less than the lifetime of an execution. *Link* v. *Architectural Iron Works*, 24 Ill. 551.

If the amount is large, a longer time should be given. *Claycomb* v. *Cecil*, 27 Ill. 497. *Strawn* v. *Cogswell*, 28 Ill. 457.

rials furnished, or if such land, lot, lode, mining-claim, water-claim, or other premises, at the time of making the contract, is mortgaged, or under any other encumbrance, the person who procures the work or material, shall, nevertheless, be considered the owner[7] within the meaning of this article, to the extent of his rights and interest in the premises; and the lien herein provided for shall bind his whole estate and interest therein, in like manner as a mortgage would have done; and the creditor may cause the right of redemption, or whatever right or estate such owner had in the premises at the time of making the contract, to be sold, and the proceeds of the sale to be applied according to the provisions hereof.

SEC. 18. Suits may be instituted under the provisions of this article, in favor of administrators or executors, and may be maintained against the representatives in interest of those against whom the cause of action accrued; and in suits instituted under the provisions of this article, the representatives of any party who may die, pending the suit, shall be made parties as though it were a suit in chancery.

SEC. 19. Upon proceedings under the provisions of this article, parties claiming may contest each other's rights, as well with respect to the amount due, as with respect to their right to the benefit of the lien hereby created; and upon all questions made by parties, the court shall require issues of law, or of fact to be formed, so as to bring about a speedy decision thereof.

SEC. 20. No encumbrance,[8] upon land, created before or after the making of the contract, under the provisions of this article, shall operate upon the building erected, or materials furnished, until the lien in favor of the person doing the work, or furnishing the materials, shall have been satisfied; and upon questions arising between previous encumbrancers and creditors under the provisions of this article, the previous encumbrance shall be preferred to the extent of the value of the land at the time of making the contract; and the court shall ascertain by jury, or otherwise, as the case may require, what proportion of the proceeds of any sale, shall be paid to the several parties in interest.[9]

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(7) A mere possession, without any estate or title whatever, may be subjected to a lien for materials furnished for the improvement of the premises, by contract with the party in possession. *Steigleman* v. *McBride*, 17 Ill. 300. *Donaldson* v. *Holmes*, 23 Ill. 85.

The right of a party in possession, under a contract to purchase, will pass by a sale under a decree enforcing a mechanic's lien; and the purchaser will acquire the right to complete the payment of the purchase money, and demand a conveyance. *Moore* v. *Smith*, 24 Ill. 515.

The right of a tenant to remove trade fixtures, during the term, will pass by sale on decree against the tenant. *Ibid.*

(8) See 11 Ill. 526, 26 Ill. 329.

(9) The prior encumbrancer must look alone to the land independent of the improvement, for satisfaction; and the mechanic alone to the building erected, unless the proceeds of the premises are sufficient to pay both. *Smith* v. *Moore*, 26 Ill. 395.

SEC. 21. Parties in interest, within the meaning of this article, shall include all persons who may have any legal or equitable claim to land or lots upon which a lien may be attempted to be enforced under the provisions of this article.[10]

SEC. 22. Creditors who file bills or petitions under the provisions of this article, may contest the validity of encumbrances, as well in regard to amount as to their justice; and any encumbrance, whether by mortgage, judgment, or otherwise, charged and shown to be fraudulent in respect to such creditor, or in respect to creditors generally, may be set aside by the court, and the premises made subject to the claim of the creditor, freed and discharged from such fraudulent encumbrance.

SEC. 23. In proceedings under the provisions of this article, the courts are vested with all the powers of courts of chancery, and shall be governed by the rules of proceeding and decision in those courts, so far as that power may be necessary to carry into full and complete effect the provisions hereof, and so far as those rules of proceeding and decision are applicable to cases and questions presented for adjudication and decision, hereunder.[11]

SEC. 24. No creditor shall be allowed to enforce the lien created, under the provisions of this article, as against or to the prejudice of any other creditor, or any encumbrancer, unless suit be instituted to enforce such lien, within six months after the last payment for labor and materials shall have become due and payable.[12]

And this is true of the vendor of lands where the purchase money is deferred. His lien is, as to the improvements erected by the purchaser, inferior to that of the material man. *Ibid.*

Where there are prior encumbrances, the court should, by reference to a master, or by a jury, ascertain the value of the lands, and of the improvements for the erection of which the lien is claimed separately, and payment of the prior encumbrances should be decreed out of that proportion of the fund arising from the lots, and of the lien creditors, out of that proportion arising from the building; any surplus remaining from either fund after payment of the lien charged upon it, should be appropriated to discharge the other. *North Pres. Church* v. *Jevne*, 32 Ill. 220.

It is error to order a sale of the building separate from the lands. *Ibid.*

One who has a prior encumbrance upon premises, against which a mechanic's lien has been decreed, in a proceeding to which he is not a party, may have an injunction to restrain the sale; and upon final hearing of his bill, the court will adjust the equities of all the parties. *Raymond* v. *Ewing*, 26 Ill. 329.

[10] Judgment creditors of the defendant, and prior encumbrancers, must be made parties to the petition, or their rights will not be affected. *McLagan* v. *Brown*, 11 Ill. 526. *Raymond* v. *Ewing*, 26 Ill. 329.

[11] The answer of the defendant, so far as responsive to the petition, may be read in evidence to the jury. *Kimball* v. *Cook*, 1 Gilm. 433. *Garrett* v. *Stevenson*, 3 Gilm. 269.

The replication must be general. *Shaeffer* v. *Weed*, 3 Gilm. 511.

Where the issue is tried by a jury, the decree need not recite the testimony upon which it is based. *Ross* v. *Derr*, 18 Ill. 245.

And see *Sutherland* v. *Ryerson*, 24 Ill. 517.

[12] The mechanic cannot, by contract with the debtor, extend his lien to the prejudice of an encumbrancer. If he give time to his debtor, beyond the six months, the lien is dissolved as to all prior encumbrancers. *Brown* v. *Moore*, 26 Ill. 421.

The term, "any other creditor," is construed to mean, a creditor having a lien, in pursuance of the first section, which is still enforceable. *Shaeffer* v. *Weed*, 3 Gilm. 515.

There is no limitation, in point of time, upon the creditor's right to enforce his lien as against the debtor merely. *Garrett* v. *Stevenson*, 3 Gilm. 263.

SEC. 25. Nothing contained in this article shall be construed to prevent any creditor from maintaining an action at law upon his contract, in like manner as if he had no lien for the security of his debt.[13]

SEC. 26. If, upon making sale of any premises under this article, the proceeds of such sale shall not be sufficient to pay the claims of all parties, according to their rights, the judgment shall be credited by the amount of such sale, and execution may issue in favor of any creditor whose claim is not satisfied, for the balance due, as upon a judgment in actions of debt or *assumpsit*; and in cases of excess of sales, over the amount of judgment, such excess shall be paid to the owner of the land, or to the person who may be entitled to the same, under the direction of the court.

SEC. 27. The costs of proceedings under the provisions of this article, as between creditors claiming liens, and the person against whom the lien is intended to be enforced, shall abide the event of the suit; and the costs, as between creditors aforesaid, in contests relative to each other's claims, shall be subject to the order of the court; and the same rule shall prevail in respect to costs growing out of proceedings against and between encumbrancers.

ARTICLE II. MINERS' LIENS.

SECTION 1. Any person who shall, by contract with the owner of any mine, tunnel, shaft, or adit, or the lessee of any mine, tunnel, shaft, or adit, or the agent or superintendent of any incorporated company owning any mine, tunnel, shaft, or adit, situated in this territory, furnish labor or material for sinking any shaft, or running any tunnel or adit for the development of any mine, shall have a lien from the date of the contract, upon such mine, tunnel, shaft, or adit, for the amount due him for such labor or material, in the same manner as now allowed by

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(13) The remedy afforded by this chapter is cumulative to the creditor's remedy by action at common-law. *Delahay* v. *Clement*, 3 Scam. 201.

The institution of a suit by attachment against the debtor, subsequent, or as it seems, prior to the filing of the petition, is not a waiver of the lien. *West* v. *Fleming*, 18 Ill. 248.

If decree be given against the petition it is no bar to a subsequent action at common-law; for such decree proves not the non-existence of the debt, but the non-existence of the lien. *Hunter* v. *Blanchard*, 18 Ill. 318.

The taking of the debtor's note, unless in payment absolutely, does not waive the lien. *Van Court* v. *Bushnell*, 21 Ill. 624.

Taking the note of a firm in payment for labor performed for one of the co-partners, discharges the lien. *Bennesson* v. *Thayer*, 23 Ill. 374.

But the lien is not waived by accepting the note of the debtor, bearing interest, but without security. *Brady* v. *Anderson*, 24 Ill. 110.

If the creditor take other security for his debt, the lien is discharged. *Kinzie* v. *Thomas*, 28 Ill. 502.

And see *Cowl* v. *Varnum*, 37 Ill. 181.

A mere agreement to accept other security and give forbearance, does not waive the lien, where the security stipulated for is not actually executed. *Gardner* v. *Hall*, 29 Ill. 279.

law to mechanics for furnishing labor or materials for the erection or repair of buildings.

SEC. 2. Liens provided for in this article shall be enforced in the same manner that mechanics' liens are now enforced by law.

ARTICLE III. LIENS UPON PERSONAL PROPERTY.

SECTION 1. Any ranchman, farmer, agistor, or herder of cattle, tavern-keeper, or livery-stable keeper, to whom any horses, mules, asses, cattle, or sheep, shall be intrusted, for the purpose of feeding, herding, pasturing, or ranching, shall have a lien upon said horses, mules, asses, cattle, or sheep, for the amount that may be due for such feeding, herding, pasturing, or ranching, and shall be authorized to retain possession, of such horses, mules, asses, cattle, or sheep, until the said amount is paid: *Provided*, That the provisions of this section shall not be construed to apply to stolen stock.

SEC. 2. Every common carrier of goods or passengers who shall, at the request of the owner of any personal goods, carry, convey, or transport the same from one place to another; and any warehouseman or other person who shall safely keep or store any personal property, at the request of the owner, or person lawfully in possession thereof, shall, in like manner, have a lien upon all such personal property, for his reasonable charges for the transportation, storage, or keeping thereof, and for all reasonable and proper advances made thereon by him, in accordance with the usage and custom of common carriers and warehousemen.

SEC. 3. Any mechanic or other person who shall make, alter, repair, or bestow labor upon, any article of personal property, for the improvement thereof, at the request of the owner of such personal property, or of the materials from which the same is made, shall, in like manner, have a lien upon all such articles of personal property, for his reasonable charges for the labor performed and materials furnished and used in such making, alteration, repair, or improvement.

SEC. 4. If any such charges for which a lien is given by the three preceding sections, be not paid within ninety days after the same become due and payable, the mechanic, innkeeper, agistor, or other person to whom such lien is given, as aforesaid, may apply to any justice of the peace of the county wherein he resides, to appoint appraisers to appraise the several articles of personal property whereon such lien is claimed. Such justice shall thereupon appoint, by warrant under his hand and seal, three reputable householders of the county, not interested in the matter, to appraise such personal property.

SEC. 5. The appraisers so appointed shall be sworn by the justice, to well and faithfully appraise and value all such personal property, and shall thereupon proceed to view and appraise the same, and shall return their appraisement, wherein shall be set down each article separately, to the justice by whom they were appointed, within ten days after their appointment.

SEC. 6. After such appraisement is made, the person to whom such lien is given by the foregoing sections, may, after giving ten days' prior notice of the time, place, and terms of such sale, with a description of the property to be sold, by publication in some newspaper published in the county wherein he resides, (or if there be no such newspaper, then by posting in three public places within such county,) and delivering to the owner of such personal property, or if he do not reside in the county, transmitting by mail to him at his usual place of abode, if known, a copy of such notice, proceed to sell all such personal property, or so much thereof as may be necessary, at public auction, for cash in hand, at any public place within such county, between the hours of ten a. m. and four p. m. of the day appointed; and from the proceeds thereof, may pay the reasonable costs of such appraisement, notice, and sale, and his reasonable charges for which he hath his lien. The residue of the proceeds of such property unsold, he shall render unto the owner.

SEC. 7. No such sale shall be made for less than two thirds of the appraised value of the article sold, nor except upon due notice, as required by the preceding section; every such sale made in violation of the provisions of this section, shall be absolutely void.

SEC. 8. At any such sale, the person to whom such lien is given, may become the purchaser.

SEC. 9. In any case where the property to be sold cannot conveniently be sold in one day, the sale may be continued from day to day, by public outcry at the place of sale. Upon the completion of such sale, the person to whom the lien is given hereby, shall cause a sale-bill thereof to be filed with the justice of the peace, before whom the appraisement was had, in which shall be set down the sum for which each separate article of property was sold, and the name of the purchaser. The justice shall record such sale-bill in his docket, and preserve the original thereof, together with the appraisement.

SEC. 10. Nothing herein contained shall be so construed as to take away the right of action of the party to whom such lien is given, for his charges, or for any residue thereof, after sale of such property.

SEC. 11. At any such sale, the person to whom such lien is given, as herein provided, may appoint a clerk and crier.

Sec. 12. Appraisers appointed under the provisions of this chapter, shall receive three dollars per day; justices of the peace shall receive for each warrant of appraisement, one dollar; for receiving and recording each appraisement, twenty cents per one hundred words, and the like fees for recording each sale-bill; clerks and criers at sales made under the provisions hereof, shall receive each three dollars per day.

Prior Statutes Repealed. An act creating a lien in favor of Mechanics in certain cases. Approved November 4, 1861. Laws 1861, p. 258.

An act amendatory of an act entitled An act granting a Lien in favor of Mechanics in certain cases. Approved August 15, 1862. Laws 1862, p. 79.

An act creating a Lien in favor of Mechanics and others, in certain cases. Approved March 11, 1864. Laws 1864, p. 104.

An act to create a Lien in favor of Ranchmen and others. Approved November 6, 1861. Laws 1861, p. 349.

An act amendatory of an act entitled An act to create a Lien in favor of Ranchmen and others. Approved August 8, 1862. Laws 1862, p. 83.

An act creating a Lien in favor of Mechanics in certain cases. Approved January 11, 1867. Laws 1867, p. 75.

An act creating a Lien in favor of Miners in certain cases. Approved January 11, 1867. Laws 1867, p. 81.

CHAPTER LV.

LIMITATIONS.

Section
1. Certain actions upon contracts and legal liabilities barred after six years from accruing thereof.
2. Actions for torts barred after one year.
3. Actions against sheriffs for escapes.
4. Actions against sheriffs and coroners for any act done or omitted in their official capacity.
5. Action on account current deemed to accrue at date of last item.
6. Personal actions upon any contract not limited by foregoing, or other law, to be brought in three years.
7. The provisions of this chapter apply to any debt alleged by way of set-off.
8. Penal actions to be brought in one year after cause of action accrued.
9. If suit limited by statute to be brought within a shorter time, the above section not to apply.
10. Where jurisdiction of law and equity concurrent, the limitation at law to apply in equity.
11. The last section not applicable where a court of equity has exclusive jurisdiction.
12. Bills for relief on ground of fraud to be brought in three years after discovery of the fraud.
13. Bills for relief in case of a trust not cognizable by courts of common-law, to be brought in five years after cause of action accrue.
14. Exemption from the two last sections of persons under disabilities.
15. If person entitled to bring action be a minor, *femme covert*, insane, imprisoned, or absent from United States at accruing thereof, limitation to commence from removal of disability.

Section
16. Limitation of actions accruing out of the territory.
17. If party entitled to bring action die before expiration of period of limitation, executor or administrator may bring his action one year after granting letters testamentary, etc.
18. If action commenced within the period of limitation be abated by death of defendant, or by any informality of process; or if after judgment, judgment be arrested or reversed, the plaintiff may commence a new action within one year; in case of plaintiff's death, executor or administrator may bring new action within the same period.
19. Promise by one of several joint contractors, executors or administrators, not to bind his co-contractors, etc., so as to deprive him of the benefits of this chapter.
20. In actions against several joint contractors, if it appear that plaintiff is barred by this chapter, as to one or more defendants, but entitled to recover as against other defendants, judgment to be given accordingly.
21. If plea in abatement be interposed of non-joinder of defendant, and it appear that defendant not joined is discharged, by this chapter, issue shall be found for the plaintiff.
22. Nothing in three preceding sections to impair the effect of a payment by defendant; plaintiff's indorsement or memorandum not evidence of such payment.
23. Payment by one of several defendants not to deprive others of the benefits of this chapter.

SECTION 1. The following actions shall be commenced within six years, next after the cause of action shall accrue, and not afterwards: *First*, All actions of debt founded upon any contract or liability in action. *Second*, All actions upon judgments rendered in any court, not being a court of record. *Third*, All actions for arrears of rent. *Fourth*, All actions of *assumpsit*, or on the case, founded on any contract or liability, express or implied. *Fifth*, All actions for waste, and for trespass on land. *Sixth*, All actions of replevin, and all other actions for taking, detaining, or injuring goods or chattels. *Seventh*, All other actions on the case, except actions for slanderous words, and for libels.

SEC. 2. All actions for assault and battery, and for false imprisonment, and all actions for slanderous words, and for libels, shall be commenced within one year, next after the cause of action shall accrue, and not afterwards.

SEC. 3. All actions against sheriffs, or other officers, for the escape of persons imprisoned on civil process, shall be commenced within six months from the time of such escape, and not afterwards.

SEC. 4. All actions against sheriffs and coroners, upon any liability incurred by them, by the doing of any act in their official capacity, or by the omission of any official duty, except for escapes, shall be brought within one year after the cause of action shall have accrued, and not after that period.

SEC. 5. In all actions of debt or *assumpsit*, brought to recover the balance due upon a mutual and open account current, the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

SEC. 6. All personal actions, on any account not limited by the foregoing sections, or by any other law in this territory, shall be brought within three years after the accruing of the cause of action, and not afterwards.

SEC. 7. All the provisions of this chapter shall apply to the case of any debt or contract, alleged, by way of set-off, on the part of a defendant; and the time of limitation of such debt, shall be computed, in like manner as if an action had been commenced therefor, at the time when the plaintiff's action accrued.

SEC. 8. All actions and suits, for any penalty or forfeiture of any penal statute, brought by this territory, or any person to whom the penalty or forfeiture is given, in whole or in part, shall be commenced within one year next after the offence is committed, and not after that time.

SEC. 9. The preceding section shall not apply to any suit which is or shall be limited by any statute to be brought within a shorter time than is prescribed therein, but such suit shall be brought within the time that may be limited by such statute.

SEC. 10. Whenever there is a concurrent jurisdiction in the courts of common-law and in courts of equity, of any cause of action, the provisions of this chapter limiting the time for the commencement of a suit for such cause of action in a court of common-law, shall apply to all suits hereafter to be brought for the same cause in the court of chancery.

SEC. 11. The last section shall not extend to suits over the subject-matter of which, a court of equity has peculiar and exclusive jurisdiction, and which subject-matter is not cognizable in the courts of common-law.

SEC. 12. Bills for relief, on the ground of fraud, shall be filed within three years after the discovery by the aggrieved party, of the facts constituting such fraud, and not afterwards.

SEC. 13. Bills for relief, in case of the existence of a trust not cognizable by the courts of common-law, and in all other cases not herein provided for, shall be filed within five years after the cause thereof shall acorue, and not after.

SEC. 14. If the person entitled to file any bill specified in the two last sections, be, at the time of discovering the facts constituting such fraud, or at the time the cause for filing such bill shall accrue, under any of the disabilities enumerated in this chapter, the time during which such disabilites shall continue shall be excepted from the limitations contained in the two last sections, in the same manner and with like effect, as such time is herein excepted from the limitations prescribed for commencing actions at law; and in case of the death of the person so entitled, during such disability, or before the expiration of the time herein limited for filing such bills, the same may be filed by the heirs or representatives of such person, as the case may require, within the same time as is allowed in this chapter for commencing actions at law in the like cases.

SEC. 15. If any person entitled to bring any of the actions before-mentioned in this chapter, shall, at the time when the cause of action accrues, be within the age of twenty-one years, or a married woman, insane, imprisoned, or absent from the United States, such person may bring the said actions, within the time in this chapter respectively limited, after the disability shall be removed.

SEC. 16. It shall be lawful for any person, against whom any action shall be commenced in any court of this territory, where the cause of action accrued without the territory, upon a contract or agreement, express or implied, more than two years before the commencement of the action, or upon any sealed instrument in writing, or judgment or decree of any court, more than three years before the commencement of the action, to plead the same, and give the same in bar of the plaintiff's right of action.

SEC. 17. If any person entitled to bring any of the actions before-mentioned herein, shall die before the expiration of the time herein limited therefor, and if the cause of action does by law survive, the action may be commenced by the executor or administrator of the deceased person, as the case may be, at any time within one year after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

SEC. 18. If in any action duly commenced, within the time herein limited, and allowed therefor, the process shall fail of a sufficient service, or return, by any unavoidable accident, or by any default or neglect of the officer to whom it was committed; or if the process shall be abated, or the actions otherwise avoided or defeated by the death of any party thereto, or for any matter of form: or if after a verdict for the plaintiff, the judgment shall be arrested; or if the judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

SEC. 19. If there are two or more joint contractors, or joint executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the provisions of this chapter, so as to be chargeable, by reason only, of an acknowledgment or promise made by any other or others of them.

SEC. 20. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any others or other of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff, as to any of the defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

SEC. 21. If in any action on contract, the defendant shall plead in abatement, that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear on the trial, that the action was by reason of the provisions of this chapter barred against the person so named in the plea, the said issue shall be found for the plaintiff.

SEC. 22. Nothing in the three preceding sections shall alter, take away, or lessen the effect of a payment of any principal or interest made by any person; but no indorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this chapter.

SEC. 23. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall lose the benefit of the provisions of this chapter, so as to be chargeable, by reason only of any payment made by any other or others of them.

Prior Statutes Repealed. An act to provide for Limitations of Actions. Approved November 5, 1861. Laws 1861, p. 341.

An act to provide for Stay of Procedure on Foreign Indebtedness. Approved November 5, 1861. Laws 1861, p. 340.

Prior Statutes of Temporary Operation. An act to protect the Mining Claims and Property of Soldiers.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. The interest in mining claims and mining property of all inhabitants of this territory, who have enlisted or who may hereafter enlist into the service of the United States, during the present rebellion, shall not be subject to levy or sale, by virtue of any of the miners' laws, or the judgments of any of the miners' courts or clubs, until the expiration of one year from the time when such person shall be legally discharged from such service: *Provided, however,* Such soldier shall file in the office of the recorder of the mining district in which claims are located, a list of the same, signed with his name.

SEC. 2. This act shall take effect from and after its passage.

Approved November 6, 1861.

CHAPTER LVI.

LUNATICS.

SECTION

1. On application of any citizen, probate court to order a jury to inquire as to the lunacy of any person alleged to be a lunatic; if jury find him or her to be a lunatic, conservator to be appointed.
2. Conservator to give bond.
3. Conservator to have care and custody of lunatic's estate, and to return an inventory thereof.
4. May maintain action at law in name of lunatic.
5. Process against lunatic to be served on conservator; conservator to defend such actions.
6. Conservator to apply estate, *first*, To pay the debts, and *second*, To support family of lunatic.
7. Probate court to allow demands against lunatic; notice of presentation to be given to conservator.
8. Claims to be presented or suit brought, within one year after appointment of conservator.
9. No execution to issue upon judgment recovered against lunatic after the appointment of a conservator.
10. Wife may select, and have, the articles allotted by law to widows of decedents; court may make further allowance to wife, in certain cases.
11. Conservator may sell personal estate, and lease real estate of lunatic upon order of probate court; lease of real estate not to exceed five years; order for sale of personalty, what to specify.
12. Property exempt from execution, not be sold except for support of lunatic or family.
13. Proceedings for sale or mortgaging of real estate, the same as by administrators.
14. Who to be made defendants to petition.
15. Conservator to render accounts.
16. Probate court, at every accounting, to ap-

SECTION

portion money in the hands of conservator among creditors.

17. In case of surplus, court to direct an allowance to be paid to wife of lunatic, for her support and support and education of children; allowance may be increased or diminished from time to time.
18. Allowance for children may be paid to guardian.
19. Court to allow reasonable compensation to conservator.
20. Court may require additional security from conservator; and for default thereof, or for any misconduct in his office may remove him, and appoint successor.
21. Conservator may resign; resignation not to discharge him or his sureties from liabilities incurred.
22. Conservator resigning or removed to pay and deliver to his successor, all money and property in his hands, belonging to lunatic.
23. Who to have custody of body of lunatic; expense of supporting lunatic to be paid from his estate, or, if he have none, by county.
24. How conservator of lunatic, appointed in any foreign state, may sell real estate of lunatic, situate in this territory.
25. In case lunatic restored to reason, conservator to account, and to surrender residue of his estate; in case of his death, residue to be turned over to executor or administrator.
26. Contracts with lunatic void except at election of conservator; obtaining property from a known lunatic, by trading, gaming, etc., deemed swindling.
27. How inquest had to determine the restoration of lunatic to reason.
28. Maniac found at large may be arrested and confined by any sheriff, etc., until inquest be had; upon inquest, may be committed to jail of county; *proviso.*
29. No inquest to be held except upon notice to lunatic, or in case of an alleged lunatic charged with crime, to district attorney.
30. Fund for support of insane.
31. County expending money in caring for insane person, how recompensed from fund.
32. Warrants drawn upon insane fund to be paid in order of presentation.
33. Relatives of lunatic pauper liable for his support.
34. The term lunatic construed.

SECTION 1. Whenever any lunatic has any estate, real or personal, the probate court of the county wherein such lunatic resides, shall, on the application in writing of any reputable citizen of said county, order a jury to be summoned to ascertain whether such person be lunatic, insane, or distracted; and if such jury return in their verdict, that such person is lunatic, insane, or distracted, it shall be the duty of the probate court aforesaid to appoint some fit person to be conservator of his or her estate.

SEC. 2. The conservator of such estate, so appointed, shall enter into bond, with sufficient security, to be approved by the court, to the people of the territory of Colorado, in double the amount of the estate of such lunatic, which shall be ascertained by the probate court aforesaid, conditioned for the faithful discharge of his duties as such conservator.

SEC. 3. The conservator shall have the entire care and charge of the estate of such lunatic, both real and personal, and shall make an inventory of such estate, in the same manner as administrators are required to inventory the estates of their intestates; and shall return the same, verified by his affidavit, into the probate court, within thirty days after his appointment.

SEC. 4. The conservator shall collect and take possession of all the estate of the lunatic, real and personal; and shall have power to collect all debts due to such lunatic; and may maintain all necessary actions at law in the name of such lunatic, by himself, as conservator, against all persons who withhold or injure any of the estate of such lunatic, or from whom any such debt or damages may be due to him, and unpaid.

SEC. 5. In all actions against the lunatic, service of process shall be made upon his conservator, who shall defend every such action.

SEC. 6. It shall be the duty of the conservator to apply the annual income and profits of the estate of the lunatic, and the proceeds of all sales and mortgaging of such estate, as hereinafter mentioned: *First*, To the payment of the debts of such lunatic, and the surplus thereof to the maintenance of such lunatic, and his or her family, and the education of the children, if any, of him or her; in all cases under the direction of the probate court.

SEC. 7. The probate court shall have jurisdiction to allow demands against the lunatic, to be satisfied out of his or her estate, upon the presentation thereof, with notice to the conservator, in the same manner as against intestate estates.

SEC. 8. All persons having claims against any lunatic, shall present the same for allowance, to the probate court, or cause suit to be instituted thereon in some other court, within one year after the appointment of the conservator, or be barred of any share in the estate of such lunatic, contained in the inventory filed as aforesaid.

SEC. 9. No writ of execution shall issue to enforce a judgment recovered against any lunatic, after the appointment of a conservator, until such lunatic, upon inquisition, as hereinafter provided, shall have been declared sane; but every such judgment shall be enforced against his estate in the manner provided for the collection of judgments against executors and administrators, for the debts of their testators or intestates.

SEC. 10. The wife of such lunatic, upon the return of the inventory of his estate, may select and take the articles which would be allowed to her as his widow, in case of his death; and the probate court, if satisfied that such lunatic is solvent and hath property more than sufficient to pay all his debts, may make further allowance to the wife, for her support and the support and education of the minor children, if any, to be paid at such times and in such sums as the court may direct.

SEC. 11. The conservator shall have power to sell the personal estate, and *choses in action*, of the lunatic, and to lease his or her lands, upon such terms and conditions as the probate court may, by an order previously entered of record, direct and approve; but no such lease shall be for a term exceeding five years; and every order for the sale of the personal estate, shall specify particularly the amount thereof which shall be sold.

SEC. 12. Real and personal estate which is or may be by law exempt from execution, shall not be sold except for the support of such lunatic, or his wife or children.

SEC. 13. Whenever it shall be necessary to sell the real estate of any lunatic, or to raise money by the mortgage of the same, for the purpose of paying his or her debts, or redeeming other real estate from mortgage, or other encumbrance, or for the support of his or her family, and the education of his or her children, the conservator may procure an order for the sale or mortgaging thereof, from the probate court wherein he was appointed, upon petition in the same manner as provided for the sale of the real estate of intestates by administrators; such petition, sale, report thereof, and conveyance of the estate sold, shall be conducted in the same manner as provided in the chapter concerning wills, executors, and administrators.

SEC. 14. To every such petition, the persons who would inherit such estate of the lunatic, in case of his or her death, shall be made defendants; and every such petition shall set forth particularly the purpose for which such sale is deemed necessary.

SEC. 15. The conservator, at the first term of the probate court, succeeding six months after his appointment, and at every alternate term thereafter, shall present to the court an account of his administration of the affairs of the lunatic, setting forth the amount of money received by him, and the sources from which the same was received, the amount and the several articles of personal property, and *choses in action* on hand, and the several sums of money expended by him; and every such report shall be accompanied by the proper vouchers for such expenditures.

SEC. 16. The probate court shall proceed upon every such accounting, to apportion the money in the hands of the conservator, among the creditors of such lunatic, as in the case of intestates' estates, upon the accounting of the administrator.

SEC. 17. If there be any surplus after the payment of debts and the expenses of administration, the court may direct the conservator to pay to the wife of such lunatic, for her support, and the support and education of the minor children, an allowance, to be fixed by the court, suitable and according to her condition in life; and such allowance may be increased or diminished from time to time, as the court may see fit.

SEC. 18. The allowance for such minor children may be paid to the guardian, if the court shall so direct.

SEC. 19. The conservator shall receive, for his care and trouble, such reasonable compensation as the court may allow.

SEC. 20. The probate court may, from time to time, require additional security upon the bond of any conservator, and for default of giving such additional security, when ordered by the court, or for any default or misconduct in office, may remove any conservator and appoint a successor.

SEC. 21. Any conservator may, upon making final and true account of his administration of the affairs of the lunatic, resign his office; and such resignation shall be accepted by the probate court wherein such conservator was appointed; but no such resignation or the acceptance thereof, shall be construed to discharge the conservator or his securities, from any liability previously incurred.

SEC. 22. Whenever the conservator of any lunatic shall resign, or be removed from his office, such conservator shall, on the demand of the successor appointed by the probate court, deliver to such successor, possession of all money, chattels, real estate, evidences of debt, and *choses in action*, in his hands or possession, and belonging to such lunatic.

SEC. 23. The overseer of the poor-house of the county, or such other person as the county commissioners may appoint, shall, in case any lunatic hath no relative or friend who will care for him or her, have the charge of the body of such lunatic, and shall have power to confine him or her, and shall comfortably support such person, and make out an account thereof and return the same to the county commissioners, whose duty it shall be, on satisfactory proof of the justice of such account, to issue their warrant on the treasury of the county therefor; or, if such lunatic hath any estate in the hands of his conservator, such account shall be rendered to the probate court, and upon the order of the probate court, the conservator shall pay the same out of any moneys in his hands pertaining to such estate, and which may lawfully be so applied.

SEC. 24. The conservator of any lunatic, appointed in any state or territory of the United States, beyond this territory, may avail himself of the provisions of this chapter, in order to sell, mortgage, or lease the real estate of such lunatic, situate in this territory, upon filing, together with his petition, a bond for costs, as in other cases, a duly exemplified copy of his appointment as such conservator, and satisfactory proofs that he hath given adequate and sufficient security for the faithful application of the funds arising from such sale.

SEC. 25. If any such lunatic shall be restored to his or her reason, then all of his or her estate, real and personal, remaining in the hands of his or her conservator shall, by such conservator, on the order of the probate court by which such conservator was appointed, be restored to him or her; in case of the death of any such person, the remainder of his or her estate shall, in like manner, on the order of the probate court, be surrendered to his or her executors or administrators, deducting in all cases, the reasonable compensation of such conservator.

SEC. 26. All contracts, agreements and credits, with or to any such lunatic, shall be absolutely void as against such person, his or her heirs, or personal representatives; but persons making such contracts or agreements with any such lunatic, shall be bound thereby, at the election of his or her conservators. If any person by trading, bartering or gaming with any lunatic person, knowing him or her to be such, or by any other device, obtain possession of or title to any lands, tenements, goods or chattels of any such lunatic, he shall be deemed guilty of swindling, and upon conviction, shall be liable to all the penalties of swindling, as in other cases; and all property so acquired, shall be restored to such lunatic, his or her conservators, heirs, executors or administrators.

SEC. 27. If any person shall present to the probate court of the county where any such conservator hath been appointed, an information in writing, setting forth that the insane person hath been restored to his or her reason, such court shall cause the fact to be inquired of by a jury. If upon such inquest it shall be found that such person hath been restored to his or her reason, he or she shall be immediately set at liberty, and the probate court shall issue a summons requiring the conservator to appear and settle his accounts. The expenses attending any inquest held under this chapter, shall be paid out of the estate of such insane person, upon the order of the probate court, or, if there be no such estate, the county commissioners of the proper county, upon certificate of the amount thereof by the judge of the probate court, shall allow the same, and a warrant therefor shall be drawn upon the county treasurer.

SEC. 28. Whenever any maniac, or furiously insane person, shall be found at large, and there is no friend or relative of such maniac who will confine and care for him, it shall be lawful for the sheriff, or any constable, of the county where such maniac may be found, to arrest and confine him in the county jail, or other place, until an inquest can be had as provided in section one; if upon such inquest it shall be found that such person is a furious maniac, or is so disordered in his mind as to endanger his own person, or the persons or property of others, if allowed to go at large, it shall be lawful for the probate court by an order to be entered of record, to commit such insane person to the county jail, to be there confined until discharged upon inquest, as provided in the preceding section: *Provided*, That upon application of any friend or relative of such maniac, and satisfactory proof that the applicant is such friend or relative, and is a proper person to have the custody of such maniac, the probate court shall order the body of such maniac to be delivered into the custody of such friend or relative.

SEC. 29. No inquest of lunacy shall be held under this chapter until at least ten days' previous notice thereof shall have been given to the alleged lunatic, by citation, issuing out of the probate court, setting forth the time and place, when and where such inquisition will be had, and requiring the alleged lunatic to attend thereat: *Provided*, That this shall not prevent the arrest and confinement of any furious maniac, as provided in the preceding section, pending such notice and inquest: *And provided, further*, That if such alleged lunatic appear and consent to such inquest, the same may be had without such notice. No inquest shall be had as to the lunacy of any person charged with any criminal offence, until the like notice to the district attorney, or other officer charged by law to prosecute such offence. Nothing in this chapter shall be so construed as to exempt the relatives and next of kin of any insane pauper, from their liability for his or her support; and all moneys expended by any county for the maintenance of any such insane person, under the provisions of this chapter, may be recovered of the person or persons who are or may be liable by law for his or her maintenance.

SEC. 30. All sums of money received into the territorial treasury, from the collection of the tax for the support of lunatic paupers, as provided in the chapter concerning revenue, shall be kept separate and apart from all other funds in said treasury, and shall be designated as the "fund for the support of the insane," and such fund shall be disbursed as follows:

SEC. 31. Whenever any county shall hereafter expend any sum of money in the necessary support, maintenance, or preserving in custody, of any lunatic pauper, such county shall be reimbursed from the fund for the support of the insane. The county commissioners of such county shall present an account of all such expenditures, expressing the items of such expenditure, the name of the pauper for whose support the same was made, and the time of such expenditure, to the auditor of the territory, and together with such account they shall present the accounts of the person to whom such sum of money was paid, with, attached thereto the affidavit of such person that such account is true and just, that the services charged for were actually and necessarily rendered in the support and keeping of such pauper, and that he hath received from such county payment therefor; also, together with said account shall be presented an exemplification of the record of the proceeding in the probate court of such county, whereby such pauper was adjudged to be a lunatic, and a certificate from the probate judge that such lunatic hath not been since adjudged sane as provided by law: *Provided*, That such exemplification shall be filed and preserved by the auditor in his office, and at any subsequent presentation of any claim for the support of the same lunatic, it shall not be necessary to renew such exemplification. Upon the presentation of such account, verified as aforesaid, and upon proof, by the affidavit of two or more of such county commissioners, that such lunatic hath no estate, and no relation within the territory, so far as known or believed by them, or none of sufficient ability to maintain him or her, the auditor, if nothing appears to show that such claim is fraudulent or factitious, shall allow the same, and draw his warrant upon the treasury for the amount so allowed, payable out of the insane fund.

SEC. 32. All such warrants shall be paid as other warrants are, in the order in which the same are presented.

SEC. 33. If at any time after the payment of any such account for the support of any lunatic pauper, it shall appear that such lunatic had, at the time, relations within the territory, bound by law, and of sufficient ability, to support him or her, an action shall lie in behalf of the territory, to recover from such relative, all such sums of money so expended.

SEC. 34. The term lunatic as used in this chapter, shall be construed to include idiots, insane and distracted persons, and every person who by reason of intemperance or any disorder or unsoundness of mind, shall be incapable of managing and caring for his own estate.

CHAPTER LVII.

MANDAMUS.

SECTION
1. District courts may issue; appeals may be taken from decision of court in such case; writ of error, how prosecuted; to operate as a stay of proceedings.
2. Return to *mandamus*.
3. Party suing out writ may traverse return; issue thereon; trial to be as if action were brought for a false return; if verdict for party suing out writ, he shall recover damages and costs; how collected; peremptory *mandamus* to issue.
4. Damages recovered in such verdict to be a bar to subsequent action.
5. Court may allow reasonable time to plead, reply, demur, etc.

SECTION 1. The respective district courts in this territory shall have power to issue writs of *mandamus*. Appeals may be taken from the decision of the said courts, upon such terms as the said district courts shall prescribe; or writs of error may be prosecuted, whenever the supreme court, or any of the judges thereof, in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing of such writs; and the said supreme court, or judge, in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error, as the said court or judge may deem reasonable. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the district court, until the termination of such writ of error.

SEC. 2. When any writ of *mandamus* shall issue out of any court of this territory, directed and delivered to any person or persons, who, by the laws of this territory, are required to make return of such writ, such person or persons shall make his or their return to the first writ of *mandamus*.

SEC. 3. When any writ of *mandamus* shall issue out of any court of this territory, and return shall be made thereunto, it shall be lawful for the person or persons suing or prosecuting such writ, to plead to, or traverse, all or any of the material facts contained in such return, to which the person or persons making such returns shall reply, take issue, or demur, and such further proceedings shall be had therein, and in such manner, for the determination thereof, as might have been had, if the person or persons suing out such writ had brought his or their action on the case for a false return. If any issue shall be joined upon such proceedings, the person or persons suing such writ, shall and may try the same, in such place as an issue joined on such action on the case should or might have been tried. In case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by *nihil dicit*, or for want of replication or other pleading, he or they shall recover his or their damages and costs, in such manner as he or they might have done in an action on the case, as aforesaid; such damages and costs shall and may be levied by execution as in other cases, and a peremptory writ of *mandamus* shall be granted, without delay, for him or them for whom judgment shall be given, as might have been if such return had been adjudged insufficient. In case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid.

SEC. 4. If any damages shall be recovered by virtue of the provisions of this chapter, against any person or persons making such returns to such writ, as aforesaid, he or they shall not be liable to be sued, in any other action of suit, for the making of such return, any law, usage, or custom to the contrary notwithstanding.

SEC. 5. It shall and may be lawful to and for the court issuing any writ of *mandamus*, to allow such person or persons respectively, to whom such writ shall be directed, or the person or persons who shall sue or prosecute the same, such convenient time, respectively, to make return, plead, reply, rejoin or demur, as to the court shall seem just and reasonable, anything herein contained to the contrary notwithstanding.

Prior Statutes Repealed. An act to regulate proceedings on Writs of *Mandamus*. Approved November 7, 1861. Laws 1861, p. 362.

CHAPTER LVIII.

MARKS AND BRANDS.

SECTION
1. No person to use a brand for the purpose of marking horses, mules, hogs, sheep, or neat cattle, unless brand first recorded.
2. Any person desiring to use a brand to cause fac-simile to be recorded in county clerk's office; the same brand not to be recorded for two persons in same county.
3. Horned cattle over the age of one year not allowed to run at large in certain counties, unless branded; penalty.
4. Brands to be impressed on left side: whenever branded animal sold, to be counter-branded on right side.
5. Brands previously used to be recorded by July first, 1868.
6. Effacing brand, impressing one brand upon another, branding with a brand not recorded, branding stock of one person with brand recorded to another, selling branded animal without counter-branding; penalty.
7. Counterfeiting brand, knowingly manufacturing branding-iron for any person other than the one to whom such brand has been recorded; penalty.
8. Defacing brand, or marking animal of another with one's own brand, with intent to convert same: penalty.
9. Fines and penalties, how disposed of.
10. Person found driving away stock branded with a brand not recorded to him, and not counter-branded, may be arrested; justice of peace may commit, or admit to bail.

SECTION 1. No person shall use any mark or brand for the purpose of marking any horse, mare, mule, colt, filly, sheep, hog, or any head of neat cattle, until a description of said brand shall have been first recorded in the office of the county clerk of the county wherein the owner of such animal resides, in the manner hereinafter provided.

SEC. 2. Any person desiring to use any mark or brand for the purpose of marking any of his animals, such as mentioned in the preceding section, shall make and sign a certificate, setting forth a fac-simile and description of the brand which he desires to use, and shall file the same for record in the office of the county clerk of the county wherein he resides, who shall record the same in a book to be kept by him for that purpose; and from and after the filing of such certificate, the person filing the same, shall, within such county, have the exclusive right to use such brand, for the purpose aforesaid; the same description shall not thereafter be recorded for any other person within the same county.

SEC. 3. No head of horned cattle over the age of one year, shall be permitted to roam at large within the counties of Larimer, Boulder, Weld, Arapahoe, Douglas, El Paso, Pueblo, Conejos, Costilla, Saguache, Fremont, Huerfano, or Las Animas, unless the same be branded with the brand of the owner, previously recorded as herein above provided; and if any such animal be found at large, without being so branded, in any of the said counties, the owner thereof shall be fined in a sum of not less than five dollars nor more than twenty-five dollars, to be recovered by action of debt, in the name of the people of the territory of Colorado, before any justice of the peace of the proper county.

SEC. 4. All brands and marks shall be impressed or placed upon the left or near side of the animal branded, and whenever any person shall sell any branded or marked animal, he shall counter-brand such animal upon the right or off-side, to indicate such sale.

SEC. 5. All owners of stock, who have not heretofore recorded the marks and brands heretofore used by them, shall cause a description and fac-simile thereof, as specified in the second section, to be recorded in the office of the county clerk of the county wherein they may reside, on or before the first day of July next.

SEC. 6. If any person shall efface, or alter, any mark or brand upon any such animal, as mentioned in the first section, or brand any such animal upon a former brand so as to obliterate or deface such former brand, or shall mark or brand any such animal as mentioned in the first section, with a mark or brand not previously recorded, as herein required, or shall knowingly mark or brand with a brand previously recorded for another person, any such animal, not belonging to the person for whom such brand was recorded, or shall sell any branded animal, and not counter-brand the same, as herein required, every person so offending, shall, upon conviction thereof, pay a fine of not less than ten dollars nor more than one hundred dollars, to be recovered by action of debt, in the name of the people of the territory of Colorado, in any court of competent jurisdiction.

SEC. 7. If any person shall knowingly counterfeit any recorded brand, or manafacture a fac-simile of any branding or marking iron, for a person other than the one for whom the same hath been theretofore recorded; every such person so offending, shall, on conviction thereof, be imprisoned in the county jail for any period not exceeding one year, and pay a fine of not less than ten dollars nor more than five hundred dollars.

SEC. 8. If any person shall wilfully brand or mark with his own brand, any animal such as mentioned in the first section, being the property of another, or shall wilfully efface, deface, or obliterate, any mark or brand upon any such animal, with intent to convert such animal to his own use, or to prevent the owner thereof from recovering the same, every such person so offending shall be deemed guilty of larceny.

SEC. 9. All fines and penalties incurred under any of the provisions of this chapter, shall be paid into the treasury of the county, for the use of common-schools.

SEC. 10. If any person be found driving, or leading, any head of horned cattle branded with a brand not recorded to such person, and not counter-branded as herein provided, any justice of the peace or constable of the county, or other person, shall be authorized to arrest such person, and convey him before some justice of the peace of the proper county, to answer to the charge of feloniously stealing such cattle; and unless such person shall satisfactorily account to such justice of the peace, for his having in possession such cattle, such justice of the peace may commit him to the common-jail of the county, or admit him to bail to answer to any indictment which may be preferred against him for stealing such cattle.

Prior Statutes Repealed. An act concerning Marks and Brands. Approved March 5, 1864. Laws 1864, p. 110.

CHAPTER LIX.

MARRIAGES.

SECTION
1. Marriage a civil contract.
2. Certain marriages incestuous and void; marriages between whites and negroes void; not to apply to that portion of territory derived from New Mexico.
3. Contracting or solemnizing marriage contrary to preceding section a misdemeanor; punished by fine and imprisonment.
4. Marriages contracted beyond this territory, and valid by law where contracted, valid here; this not to sanction bigamy or polygamy.
5. Who may perform the ceremony of marriage.
6. No judge, etc., to marry any parties under their majority, without consent of parents or guardians; *proviso;* penalty for violation of this section.
7. Record of marriage to be kept; certificate of each marriage to be transmitted to clerk of the county within six months; penalty for neglect.
8. Clerk to record such certificates; penalty.
9. Books of marriages and copies of entries therein to be evidence.
10. Penalty for making false returns of marriage, or false record thereof.
11. Fines to be paid into treasury of county for use of common-schools.
12. Marriages solemnized by the president or judge of any mining district, or by any justice or minister, heretofore, legalized.

SECTION 1. Marriage is considered in law a civil contract, to which the consent of the parties is essential.

SEC. 2. All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the one half, as well as the whole blood, and between uncles and nieces, aunts and nephews, and cousins of the first degree, are hereby declared to be incestuous and absolutely void; and all marriages between negroes and mulattoes, of either sex, and white persons, are also declared to be absolutely void. This section shall extend to illegitimate, as well as legitimate, children: *Provided,* That nothing in this section shall be so construed as to prevent the people living in that portion of the territory acquired from New Mexico, from marrying according to the custom of that country.

SEC. 3. Whosoever shall knowingly contract marriage in fact, contrary to the prohibitions in the preceding section, and whosoever shall knowingly solemnize any such marriage, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than fifty, nor more than five hundred dollars, or imprisonment for not less than three months nor more than two years, or both, at the discretion of the court which shall try the cause.

SEC. 4. All marriages contracted without this territory, which shall be valid by the laws of the country in which the same were contracted, shall be held valid in all courts within this territory: *Provided*, Nothing in this section shall be construed so as to allow bigamy or polygamy in this territory.

SEC. 5. Any judge, or justice of the peace, clergyman, or licensed preacher of the gospel, may perform the ceremony of marriage in this territory.

SEC. 6. No judge, justice of the peace, clergyman, preacher of the gospel, or other person, shall knowingly join in marriage any male under the age of twenty-one, or female under the age of eighteen years, without the consent of their parents, or guardian under whose care and government such minor may be: *Provided*, If the parties desiring to be married have no parents or guardian in this territory, then the person chosen to solemnize the marriage, shall exercise his own judgment in uniting them in marriage. Any person who shall knowingly violate the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine not exceeding five hundred dollars.

SEC. 7. Every person having authority to join others in marriage, shall keep a record of all marriages solemnized before him, and within three months, transmit a certificate of every marriage, containing both christian and surname, to the clerk of the county in which such marriage took place. Any person refusing or neglecting to make such return, within the above required time, shall forfeit, for every such offence, the sum of one hundred dollars, to be recovered, with costs, by the recorder.

SEC. 8. The clerk shall record all such returns of marriages, in a book to be kept for that purpose, within one month after receiving the same. If any recorder shall neglect or refuse to record within the said time any return to him made, he shall forfeit one hundred dollars, to be recovered, with costs, by any person who will prosecute for the same.

SEC. 9. The books of marriages to be kept by the respective recorders, and copies of entries therein, certified by him, under his official seal, shall be evidence in all courts.

SEC. 10. If any person, authorized to solemnize any marriage, shall wilfully make a false return of any marriage, or pretended marriage, to the clerk; or if the clerk shall wilfully make a false record of any return of a marriage, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars, and by imprisonment of not less than three months.

SEC. 11. All fines and penalties accruing under the provisions of this chapter, shall be paid into the county treasury, for the use of common-schools, in which the offence was committed.

SEC. 12. All marriages which have been solemnized in this territory, whether by any president or judge of any mining district, elected under and acting by the laws thereof, or by any justice of the peace or clergyman, prior to the tenth day of March, A. D. 1864, are hereby declared confirmed and made legal, and all children, the issue of such marriage, shall have the same right in law and equity as if such marriage had been solemnized according to the provisions of this chapter.

Prior Statutes Repealed. An act relating to Marriages. Approved March 10, 1864. Laws 1864, p. 108.

CHAPTER LX.

MARRIED WOMEN.

SECTION
1. The property of married woman, at her marriage, and rents and profits thereof, and any property coming to her, except by gift of husband, including gifts of jewelry, silver-ware, etc., from her husband, not subject to disposal of husband, nor liable to his debts.
2. Married woman may convey personal property and make contract in reference thereto as if sole.
3. May sue and be sued, as if sole.
4. May make will; not to bequeath away from her husband more than one half her property, except with his consent in writing.
5. If married man, by will, deprive his wife of over one half his property, she may elect to take devise, or one half his estate.
6. Married woman may carry on trade or business, as if sole, and sue and be sued in reference thereto; earnings and profits, her sole and separate property; her estate liable to execution.
7. Nothing in this chapter to invalidate any marriage settlement.
8. Liability of husband for debts of wife contracted before marriage.
9. Such liability not extinguished by death of wife.
10. Judgment may be rendered against wife and husband, jointly, to be satisfied out of her lands.
11. Judgment against husband and wife, for tort of wife, execution to be first levied on lands of wife.
12. Separate deed of husband conveys no interest in wife's lands.

SECTION 1. The property, real and personal, which any woman in this territory may own at the time of her marriage, and the rents, issues, profits and proceeds thereof, and any real, personal or mixed property which shall come to her by descent, devise or bequest, or the gift of any person except her husband, including presents or gifts from her husband, as jewelry, silver, table-ware, watches, money and wearing apparel, shall remain her sole and separate property, notwithstanding her marriage, and not be subject to the disposal of her husband, or liable for his debts.

SEC. 2. Any married woman, while married, may bargain, sell and convey her personal property, and enter into any contract in reference to the same as if she were sole.

SEC. 3. Any woman may, while married, sue and be sued, in all matters having relation to her property, person, or reputation in the same manner as if she were sole.

SEC. 4. Any woman may, while married, make a will, but she shall not bequeath away from her husband more than one half of her property, both personal and real, without his consent in writing.

SEC. 5. In case any married man shall hereafter deprive his wife of over one half his property, by will, it shall be optional with such married woman, after the death of her husband, to accept the conditions of such will, or one half of his whole estate, both real and personal.

SEC. 6. Any married woman may carry on any trade or business, and perform any labor or services, on her sole and separate account, and the earnings of any married woman, from her trade, business, labor, or services, shall be her sole and separate property, and may be used and invested by her in her own name; and she may sue and be sued as if sole, in regard to her trade, business, labor, services and earnings, and her property acquired by trade, business, and services, and the proceeds thereof, may be taken on any execution against her.

SEC. 7. Nothing in this chapter contained, shall invalidate any marriage settlement or contract, now made or to be hereafter made.

SEC. 8. In all marriages hereafter contracted, the husband shall be liable for the debts and the liabilities of the wife, contracted before marriage, to the extent of the real and personal property he may receive with or through her, or derive from the sale or rent of her lands, and no further.

SEC. 9. Such liability of the husband shall not be extinguished by the death of the wife.

SEC. 10. When any woman against whom liability exists, shall marry, and has, or acquires lands, judgment on such liability may be rendered against her and her husband jointly, to be levied on such lands only.

SEC. 11. When any judgment is rendered against a husband and wife, for the tort of the wife, execution on such judgment shall first be levied on the lands of such wife, if she have any.

SEC. 12. The separate deed of the husband shall convey no interest in the wife's lands.

Prior Statutes Repealed. An act to protect the rights of married women. Approved November 7, 1861. Laws 1861, p. 252.

CHAPTER LXI.

MILITIA.

SECTION

ARTICLE I.—*Districts—Organization.*

1. Who liable to military duty.
2. Territory divided into two divisions; division line passing east and west through the town of Bradford.
3. Governor to be commander-in-chief; with advice of legislative council, to appoint one major-general, and one or more brigadier-generals for each division; one adjutant-general, one inspector-general, to fill vacancies when council not in session.
4. Governor, adjutant-general, inspector-general, and two major-generals, to be a military board; when to convene.

ARTICLE II.—*Enrolment.*

1. Adjutant-general to prepare blank rolls for enrolment, and distribute same.
2. Assessors to enroll militia at same time with assessment; brigadier-general may appoint an enrolling officer if necessary; enrolment to be reported to brigadier-general.
3. Assessor or enrolling officer may administer oath to any person deemed liable to military duty; fees.
4. Penalty for neglect of duty; how penalty recovered; how disposed of.
5. Brigadier-general to assign militia to companies; to post lists of companies in county clerk's office; to forward enrolment lists to adjutant-general.
6. Company, number of; brigadier-general to letter same, and form into regiments; to appoint time of company and regimental elections; report names of officers elected.
7. To order company election on petition of company; militia officered and ready for parade, to be known as uniformed militia.

ARTICLE III.—*Calling Out.*

1. Brigadier-general, on command of governor to order company elections, to give notice thereof to company; to report result.
2. When governor may call out militia; not exceeding two thousand at one time; may call for volunteers, or order a parade of all enrolled companies for draft; draft how made.
3. In certain cases, division, brigade, or regimental commander may order out his command; if no arms provided, may arm and equip themselves; militia not to be taken beyond territory; this not to authorize any expedition against Indian tribes, or against any people.
4. In what case, sheriff or mayor of any city may call upon military; duty of military officers to obey call; penalties.

SECTION

ARTICLE IV.—*Elections—Parade—Drills.*

1. Adjutant-general to provide and distribute blank warrants for attendance of enrolled militiamen; form of warrant; how served.
2. Commander-in-chief may order parades; uniformed militia to attend by companies for drill and inspection, one day in each year. Delinquents how punished; uniformed militia attending all parades and drills, exempt from jury duty, poll-taxes, and military duty in other corps.
3. Parade not to be held on election day, except upon demand of the civil authorities to suppress riot, etc.

ARTICLE V.—*Officers and Staff.*

1. To each division one major-general, staff; to each brigade, one brigadier-general, staff; regimental field and staff; company officers.
2. Staff of commander-in-chief.

ARTICLE VI.—*Military Fund—Compensation.*

1. Military poll-tax to be collected; military fund.
2. County Treasurer to keep account of fines, penalties, and taxes collected under this chapter.
3. Military fund; how appropriated; how drawn from county treasury.
4. County treasurer to preserve military fund separate from other funds; to transmit balance annually to territorial treasurer; to be kept separate from other territorial funds.
5. County treasurer to retain five per cent. of fines, two per cent. of taxes.
6. Salary of adjutant-general; how paid.
7. Pay of officers and men of companies when upon duty.

ARTICLE VII.—*Miscellaneous Provisions.*

1. Persons wounded or disabled while in service, to be provided for by territory.
2. Military board to audit claims for military service and expenditures, except the pay of officers and soldiers of uniformed militia; may require county treasurer to pay over military fund to treasurer of territory. No fee for any commission issued hereunder.
3. Certain persons exempt from enrolment.
4. Articles of war made a part of this chapter; uniform; companies may establish by-laws.
5. Towns and counties authorized to make appropriations to aid in formation of companies.
6. May levy a tax to pay such appropriations; how collected.
7. Such funds to be kept separate from other funds.

ARTICLE I. MILITARY DISTRICTS AND MILITARY ORGANIZATION.

SEC. 1. Every able-bodied male citizen of Colorado, and those who have declared their intention to become citizens of the United States, between the ages of eighteen and forty-five years, except those who are by the laws of the United States, and by this chapter, exempted therefrom, shall be subject and liable to perform military duty as a soldier, to uphold the constitution and laws of the United States and the organic act and laws of this territory.

SEC. 2. The territory shall be divided into two military divisions or districts, as follows, viz.: By a line running due east and west through the same which shall pass through the town of Bradford; the portion of the territory lying north of said line constituting the first, and that south of it, the second division.

SEC. 3. The governor shall be commander-in-chief of the militia, and shall have power, by and with the consent of the legislative council, to appoint one major-general for each division, and one or more brigadier-generals for each division, as may be required; one adjutant-general, who shall be *ex officio* quartermaster-general, and one inspector-general, who shall act as paymaster-general; and is empowered to fill vacancies in these offices when the council is not in session.

SEC. 4. The governor, adjutant-general, inspector-general, and the two major-generals, shall constitute a military board which shall convene whenever the commander-in-chief may order or the public good require.

SEC. 5. It shall be the duty of the military board to consider all matters relating to the organization, efficiency, discipline, army equipments, ammunition, uniform, and parades of the territorial militia, and after the first enrolment, and after each annual enrolment, to sub-organize the divisions into brigades; and when any new brigade is formed in either division, the governor shall appoint and commission a brigadier-general to command it, as hereinbefore provided. The brigadier-generals may be present at the sittings of the military board, when required, but shall not vote in its proceedings.

ARTICLE II. ENROLMENT.

SECTION 1. It shall be the duty of the adjutant-general of the territory, annually hereafter, before the day which is, or may, by law, be fixed for the delivery to the county assessors of the assessment lists for the annual assessment, to prepare blank rolls for enrolling companies of persons subject to military duty, and to transmit the same to the major-generals, who shall deliver the same to the brigadier-generals, with all possible dispatch; to the end that any person liable to perform military duty be enrolled and prepared for service.

SEC. 2. It shall be the duty of the several brigadier-generals, upon the receipt of the said blank rolls, to distribute them to the assessors of the several counties, townships, wards or cities comprised in their brigade districts; and said assessors shall, at the same time they are engaged in taking the valuation of real and personal property, in their respective counties, townships, wards or cities, include in their assessments, the names of all persons in their county, township, wards or cities, liable to be enrolled as aforesaid; and if the assessors neglect to perform their duty, or if it is found necessary at any time, it shall be the duty of the brigadier-general to appoint some suitable person or persons in his brigade district to act as enrolling officer therein, and to require and command him or them, by a warrant under his hand, to proceed forthwith to enroll all persons as aforesaid; and such enrolling officers and assessors shall report said enrolment to him as soon as completed.

SEC. 3. The assessors and other enrolling officers shall have power to question, under oath, which they are hereby authorized to administer, any person deemed liable to do military duty but who denies the same; and if any person refuses to be sworn the assessor shall enroll his name in the same manner as if he admitted his liability. The assessors and enrolling officers shall receive for each name enrolled as above the sum of five cents, and for each oath so administered the sum of ten cents.

SEC. 4. If any assessor or enrolling officer shall refuse or neglect to perform any duty enjoined upon them by this chapter, the person or persons guilty of such refusal or neglect shall be liable to a penalty of not less than twenty-five nor more than one hundred dollars, to be recovered by action of debt before any justice of the peace, in the name of the people of the territory of Colorado; and all moneys accruing from such prosecutions, shall, after deducting the legal costs and charges, be paid into the treasury of the county to the credit of a separate fund, to be known as the "military fund," subject to the disposal of the military board aforesaid, to meet the expenses of the military organization.

SEC. 5. Within twenty days after receiving the returns of the enrolling officers, as provided in the preceding section, it shall be the duty of the brigadier-general to proceed to arrange the enrolled militia into companies, and when so arranged he shall cause copies of said company-rolls to be posted up in the county clerk's office, and in such other places as he may deem advisable; to the end that every person enrolled may know to which company he is attached for service. He shall also cause a list of all the enrolled men of his brigade, to be forwarded to the adjutant-general, with the names of all officers and their rank, to be recorded in a book kept by him in his office.

SEC. 6. Each company shall consist of not less than thirty nor more than sixty men, and such persons so enrolled shall constitute the un-uniformed militia of Colorado. Having effected the arrangement into companies, the brigadier-general shall letter them, and form them into regiments of not less than five, nor more than ten companies each, and it shall be his duty to appoint the time for holding company and regimental elections, to preside at the regimental elections, and report the names of the company and regimental officers to the governor, to be commissioned.

SEC. 7. When any company shall petition the brigadier-general, he shall order an election for company officers, and the clerks chosen by the company shall report the certified result to him, whereupon he shall forward the names of officers so elected to the governor; and the portion of the militia so officered and reported as ready for parade, shall be designated and known as the uniformed militia of Colorado.

ARTICLE III. CALLING OUT.

SECTION 1. When the commander-in-chief, with the advice of the military board, shall so direct, the brigadier-general shall order company elections of the non-uniformed militia in their several brigade districts, and proceed to notify each member of each and every company enrolled, either himself or through the sheriff of each county, which notice may be verbal, written, or printed; said election shall be held according to military usage, and the clerk chosen by the company shall certify to the result; and after the persons so elected shall have taken the oath of office, he shall forward the result to the governor for commission.

SEC. 2. Whenever it shall be found necessary, in order to suppress insurrection, repel Indian invasion, or to open communication with the eastern states, the commander-in-chief, with the advice of the military-board, may call for volunteers, by companies, in number deemed advisable, not exceeding two thousand at any one time, and for a designated time; and if the required number of men should not volunteer by companies, he may fill the quota by volunteers at large, to be officered and equipped as provided for uniformed companies of Colorado militia. If the required number should not volunteer in either of these modes, the commander-in-chief, with the consent of the military board, may order a parade of all enrolled companies for draft, which draft shall be public, and the names drawn in the same manner as the law provides for drawing petit jurors, and the sergeant of the company, or sheriff of the county, shall have power to enforce the appearance of the persons so drawn, or their substitutes, at the appointed rendezvous.

SEC. 3. In case of any invasion, insurrection, riot, or imminent danger thereof, or threatened attack of Indians, within the limits of any division, brigade, regiment or battalion, it shall be the duty of the commandant of such division, brigade, regiment or battalion, to order out for defence of the territory, the militia or any part thereof, always calling first upon the uniformed militia, under his command, and immediately report the circumstances attending the same to his commanding officer and to the commander-in-chief; and when arms have not been supplied by the territory, the militia so called out, may arm and equip themselves, the damage and loss to be paid by the territory: *Provided*, That the militia, nor any part thereof shall ever be taken without the limits of the territory; and that no part of this section shall be so construed as to authorize the mounting of these companies, or the fitting out of any expedition against any Indian tribe in the territory, or against any people.

SEC. 4. In case of any breach of the peace, riot, turmoil, resistance of process, or apprehension of imminent danger of the same, it shall be lawful for the sheriff of any county, or the mayor of any city, to call for aid from any brigade, regiment, battalion, or company, and it shall be the duty of the commander of such brigade, regiment, battalion, or company, to whom such order is given, to order out, in aid of the civil authorities, the military force or any part thereof, under his command. Such officer shall be subject to the sheriff or public officer so requiring his service, and for refusing or neglecting to obey the order of the sheriff, or public officer, or hindering or preventing his men performing such duty, every military officer so offending shall be liable to a fine of not more than five hundred dollars, and imprisonment in the county-jail for a period of not more than three months, and in addition thereto such officer shall be liable to be tried by court-martial and sentenced to be cashiered and incapacitated forever after for holding any military commission in this territory. Any non-commissioned officer or private, like offending, shall be subject to a fine of not more than fifty dollars, to be recovered in action of debt and paid into the military fund of the county, deducting legal costs and charges.

ARTICLE IV. ELECTIONS, PARADES AND DRILLS.

SECTION 1. It shall be the duty of the adjutant-general to prepare and distribute printed blanks for warrants, to commanding officers, to compel the attendance of officers and enrolled militiamen at any election, parade, or drill, duly authorized by law, which warrants issued under said officers' hand shall have due force of law, and shall be in the following form:

S. S. HEADQUARTERS,
——Div.—— Brig.—— Reg.

(Name of person.) You are hereby directed (here insert order.)

Given under my hand this—— day —— year.

Signed A. B., Rank, Div., Brig., Reg.,
Colorado Militia.

Said warrant may be presented to the person so summoned, or left at his house, or usual place of business; and any person summoned as above, who shall neglect or refuse to appear at any election, parade, or drill, according to orders, shall forfeit the sum of ten dollars to be paid into the county treasury and credited to the militia fund.

SEC. 2. The commander-in-chief, with the advice of the military board, may order parade of all the uniformed and non-uniformed militia, at any time the public exigencies may require. The uniformed militia shall appear by companies for drill and inspection, one day in the year, viz.: The first Tuesday in June, every year, with such arms and equipments as the military board shall provide, or with their own arms and equipments. Any officer or private, belonging to any uniformed company, who shall neglect or refuse to appear at such parade, shall be returned to the county assessor as a military delinquent by his officers, and the assessor shall thereupon add the sum of two dollars to the said person's assessments for that year, to be collected as other taxes, and applied to the military fund of the county. All members of uniformed military companies who shall be present at all elections and parades, shall annually receive the sum of two dollars, out of the military fund of the county; and every member of such companies having the certificate of his commander, certifying to his proper performance of military duty, according to law and regulations, during the several elections, parades, and drills, or other military assemblage, required by law, or ordered by superior officers, shall be exempt, for the year such certificate is given, from all poll-taxes, involuntary jury duty, and from military duty, except in the corps to which he belongs. The term of service of the uniformed militia and the tenure of office shall be two years from the date of the election of company officers.

SEC. 3. No parade or rendezvous of the militia shall be ordered on any day set apart by law for an election, unless on demand of civil officers, to suppress riot, tumult or invasion.

ARTICLE V. OFFICERS AND STAFF.

SECTION 1. There shall be attached to each division of militia of this territory, one major-general and his staff, consisting of one aid, one inspector, one engineer, one paymaster, one commissary, and one quartermaster, each with the rank of major, to be appointed by the major-general. To every brigade there shall be one brigadier-general, with his staff, consisting of one aid, one inspector, one paymaster, and one quartermaster, each with the rank of captain, to be appointed by

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territorial treasurer shall keep the same as a territorial military fund, to be at the disposal of the military board or officers, as provided in section three of this article.

SEC. 5. The treasurer of any county to whom any fine shall be paid, may retain therefrom five per cent. as his fees, for the receipt and custody thereof, and from all taxes two per cent.

SEC. 6. The adjutant-general shall be entitled to receive annually, as compensation for his services, the sum of five hundred dollars, to be paid out of the territorial treasury, until a sufficient sum has accrued to the military fund, when the military board may direct his salary to be paid out of such fund.

SEC. 7. Each officer and private of every company called into active service, to repel invasion or suppress Indian depredations, shall receive one dollar and a half per day out of the military fund, and when serving under the sheriff of a county, or mayor of any city, two dollars per day, or night, to be paid out of the county or city treasury, as the case may be.

ARTICLE VII. MISCELLANEOUS.

SECTION 1. Every person who, whilst in the actual service of the territory, shall be wounded or disabled in opposing or suppressing any riot or invasion, or in any Indian expedition, shall be taken care of and provided for at the expense of the territory; and the commanding officer of any portion of the militia in the field, may provide suitable hospital and medical provisions, when the military board has not provided the same.

SEC. 2. The military board shall audit all claims for military service and expenditures, under the provisions of this chapter, except the *per diem* of officers and privates of the uniformed militia, as provided in article sixth, and may direct their payment out of the territorial military fund, and may call upon the county treasurer to pay over the county fund to the treasurer of the territory, whenever the exigencies may demand. No charge shall be allowed, or pay received, for any commissions issued under the provisions of this chapter.

SEC. 3. The following persons are exempt from enrolment under this chapter, to wit: The executive and judicial officers of this territory, lunatics, idiots, sheriffs, constables, clerks of courts, justices of the peace, and all United States officers.

SEC. 4. If any person shall molest any officer or private when on duty, the commanding officer may require such person to be put under guard during the time of such parade; and the act of congress commonly called articles of war, embraced in an act for establishing rules and articles for the government of the armies of the United States, is made a part of this chapter, so far as its provisions can be made applicable to the service of this territory, and not inconsistent with this chapter. The uniform of all companies of the uniformed militia shall be such as the companies themselves may select, and such companies are authorized to establish such by-laws, for the government of such companies, as they deem advisable, not inconsistent with this chapter or the laws of congress.

SEC. 5. The corporate authorities of any town or city, or board of county commissioners of any county in this territory are hereby authorized to appropriate such sum as they may deem expedient for the purpose of aiding in the formation and equipment of volunteer companies mustered into the service of this territory, for the purpose of enforcing the laws, suppressing insurrection, repelling hostile invasion, or the prevention of Indian depredations.

SEC. 6. For the purpose of raising the means to pay any appropriation pursuant to the foregoing section, the corporate authorities of any town or city, or board of county commissioners of any county, making such appropriation, may cause a tax to be levied and collected, not exceeding two per cent. on the dollar per annum, upon the taxable property of such town, city or county, according to the total valuation or assessment of property, in any such town, city or county. Any appropriations heretofore made by the authorities of any town, city or county, for the purpose mentioned in the preceding section are hereby legalized, and the payment thereof may be provided for by the levy and collection of a tax, not exceeding two per cent. on the dollar per annum, as other city or county taxes.

SEC. 7. All funds or money which shall be raised or appropriated under the two foregoing sections, shall be kept separate and apart, and be denominated the military fund.

Prior Statutes Repealed. An act to organize the militia. Approved October 18, 1861. Laws 1861, p. 35.

An act to organize the militia of Colorado Territory, and to repeal the act entitled An act to organize the militia. Approved August 14, 1862. Laws 1862, p. 83.

An act to organize the militia of Colorado Territory. Approved February 10, 1865. Laws 1865, p. 78.

And see the following acts which are still in force.

An act to provide for the military record of the First, Second, and Third regiments of Colorado Volunteers, lately in the service of the United States. Approved February 7, 1866. Laws 1866, p. 69.

An act to provide for the payment of the officers and men of the First Regiment of Colorado Mounted Militia. In force February 9, 1866. Laws 1866, p. 67.

An act supplemental to an act entitled An act to provide for the payment of the officers and men of the First Regiment of Colorado Mounted Militia. In force, February 9, 1866. Laws 1866, p. 68.

An act relating to appropriations for the fiscal year ending January 1, 1867. Approved February 9, 1866. Laws 1866, p. 43.

CHAPTER LXII.

MINING-CLAIMS.

SECTION
1. The term claim defined; nothing in this chapter to impair the rights of any person acquired under the miners' law.
2. Persons bringing water into the mines to have a right of way over all claims, roads, ditches; to guard the water, so as not to interfere with others.
3. No person to mine under any building without first giving security to owner, against damage.
4. Tunnel-claims for discovery to be located and recorded.
5. Tunnel companies to be entitled to two hundred and fifty feet on lodes discovered; where located; to have right of way through all lodes in course.

SECTION
6. Rights of parties where lodes unite or cross each other.
7. Two crevices discovered at a distance apart, and known by different names, being afterwards discovered to be one and the same, prior record prevails.
8. Every miner to take care of his own tailings on his own claim.
9. Every miner has a right of way over other claims for the purpose of hauling quartz.
10. Claims of soldiers protected for two years from and after the discharge of such soldier.
11. Copies of records of mining districts filed in office of county clerk, to be evidence.

SECTION 1. The term claim, as used in the mining portions of this territory, when applied to a lode, shall be construed to mean one hundred feet of the length of such lode, surface measurement, of the entire width of such lode or crevice: *Provided*, That in any case where the regulations of any mining district have heretofore defined the term claim to mean other than as above defined, nothing in this chapter shall be so construed as to impair the rights of any person or persons, holding claims under such regulations as may have been heretofore established by the people of the district in which such claim or claims are situated.

SEC. 2. Whenever any person or persons are engaged in bringing water into any portion of the mines, they shall have the right of way secured to them, and may pass over any claim, road, ditch, or other structure: *Provided*, The water be guarded so as not to interfere with prior rights.

SEC. 3. No person shall have the right to mine under any building or other improvement, unless he shall first secure the parties owning the same against all damages, except by priority of right.

SEC. 4. If any person or persons shall locate a tunnel-claim, for the purpose of discovery, he shall record the same, specifying the place of commencement and termination thereof, with the names of the parties interested therein.

SEC. 5. Any person or persons engaged in working a tunnel, within the provisions of this chapter, shall be entitled to two hundred and fifty feet each way from said tunnel, on each lode so discovered: *Provided*, They do not interfere with any vested rights. If it shall appear that claims have been staked off and recorded prior to the record of said tunnel, on the line thereof, so that the required number of feet cannot be taken near said tunnel, they may be taken upon any part thereof where the same may be found vacant; and persons working said tunnel, shall have the right of way through all lodes which may lie in in its course.

SEC. 6. When it shall appear that one lode crosses, runs into, or unites with any other lode, the priority of record shall determine the rights of claimants: *Provided*, That in no case where it appears that two lodes have crossed one another, shall the priority of record give any person the privilege of turning off from the crevice or lode which continues in the same direction of the main lode upon which he or they may have recorded their claim or claims, but such person or persons shall, at all times, follow the crevice running nearest in the general direction of the main lode upon which he or they may have recorded their claim or claims.

SEC. 7. Where two crevices are discovered at a distance from each other, and known by different names, and it shall appear that the two are one and the same lode, the persons having recorded on the first discovered lode shall be the legal owners.

SEC. 8. In no case shall any person or persons be allowed to flood the property of another person with water, or wash down the tailings of his or their sluice upon the claim or property of other persons, but it shall be the duty of every miner to take care of his own tailings, upon his own property, or become responsible for all damages that may arise therefrom.

SEC. 9. Every miner shall have the right of way across any and all claims, for the purpose of hauling quartz from his claim.

SEC. 10. All claims taken up and recorded by persons who have, since the recording of the same, enlisted in the army of the United States, or the volunteer force of this territory, shall be deemed and held as real estate for a period of two years from the expiration of their term of enlistment or discharge from service; after which time, if not represented by the said soldier or soldiers, all such claims shall be forfeited to any person who may take up the same.

SEC. 11. A copy of all the records, laws and proceedings of each mining district, so far as they relate to lode-claims, shall be filed in the office of the county clerk of the county in which the district is situated, within the boundaries of the district attached to the same, which shall be taken as evidence in any court having jurisdiction in the matters concerned in such record or proceeding; and all such records of deeds and conveyances, laws and proceedings of any mining district heretofore filed in the clerk's office of the proper county, and transcripts thereof duly certified, whether such record relate to gulch-claims, lode-claims, building-lots, or other real estate, shall have the like effect as evidence.

Prior Statutes Repealed. An act concerning Lode-Claims. Approved November 7, 1861. Laws 1861, p. 166.

An act to amend an act entitled An act concerning Lode-Claims. Approved February 8, 1866. Laws 1866, p. 77.

Prior Statutes of Temporary Operation. An act regulating Title to Water-Powers and Lode-Claims.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That all pre-emptions of water-powers, mill-sites, tunnels and mining-claims heretofore made by any person or persons within this territory, are hereby declared to be void, and all rights acquired under them forfeited in all cases wherein the pre-emptor or pre-emptors shall have departed from and remained without the territory of Colorado for the space of three consecutive years, unless such person or persons owning or pre-empting the same, shall appear and occupy and work the same, within one year after the passage of this act, except as hereinafter provided.

SEC. 2. Any and all water-powers, mill-sites, tunnels and mining-claims, forfeited by the absence of the pre-emptor as stated in the first section of this act, shall be subject to pre-emption by any person residing in the territory, being a citizen of the United States, or a foreigner having filed his intention of becoming such, the same as though such water-power, mill-site, tunnel or mining-claim had not been pre-empted, and shall be subject to forfeiture for the same cause, as in the case of the first pre-emptor, as provided in the first section of this act.

SEC. 3. In all suits or proceedings arising between persons claiming any water-power, mill-site, tunnel or mining-claim, as subsequent pre-emptors under and by virtue of the provisions of this act, and those claiming under a prior pre-emption, it shall be incumbent upon the person or persons claiming under the prior pre-emption, to show that he or they, or the person or persons under whom he or they claim, has been an actual resident of the territory during some portion of the three years immediately preceding the date of said second, or subsequent pre-emption.

SEC. 4. The provisions of this act shall not apply to any case where the original pre-emptor shall, before the passage of this act, have sold or conveyed, by a sufficient deed, such water-power, mill-site, tunnel or mining-claim, or such sale having been made without writing, the vendee shall have ever since held open and actual possession of the same; or where such original or subsequent pre-emptor, shall at the time of his departure, or at some time before the expiration of three years from such departure, have made and appointed a resident of this territory, his agent or attorney, with power to sell and convey said claims, and shall have caused such power to be recorded in the proper county; or where property is held jointly, and one or more such joint owners shall have been a resident of this territory during said three years; or where such pre-emptor has been absent from said territory and in the military service of the United States, during said time; but in all such cases, the respective rights of parties shall be determined by the laws as they existed before the passage of this act.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 8, 1866. Laws 1866, p. 71.

An act concerning Mines and Minerals.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That hereafter, each and every person who shall discover any mineral lode or vein of gold-bearing ore, or of silver or other valuable metals, in this territory, shall, by virtue of such discovery, be entitled to take, hold and possess fourteen hundred feet, lineal measure, of such lode or vein, of which the discovery shaft shall be the centre thereof, and said fourteen hundred feet, so taken, shall be known and described as the discovery claim. 1400 ft

SEC. 2. All lodes or veins of gold, silver, or other valuable minerals, which may hereafter be discovered, shall be marked at the point of discovery by a substantial stake, post or stone monument, having inscribed thereon the name of the discoverer or discoverers, and the name of the lode or vein, with date of discovery; and the discoverer or discoverers shall, before recording, excavate thereon a shaft at least ten feet deep, or deeper, if necessary, to find a well-defined crevice, or forfeit all right and title he or they may have acquired by virtue of such discovery.

SEC. 3. If any person or persons shall wilfully and maliciously destroy, deface, misplace, or carry away any stake, landmark or monument, intended to designate the name of the discoverer and name of any lode or vein of minerals, the person or persons so offending shall, on conviction thereof, be deemed guilty of fraudulent and malicious mischief, and be fined in any sum not less than one hundred dollars, nor more than one thousand dollars.

SEC. 4. On all mineral lodes or veins of gold-bearing ores, or of silver or other valuable minerals in this territory, the owner or owners of all such deposits shall, by virtue of priority of discovery, be deemed and held to be the owner or owners of all spurs, off-shoots, dips, angles, feeders, cross or parallel veins of any character or name whatsoever, lying and being within the limits of twenty-five feet in either direction from the centre of said first discovery lode or vein. 25 ft

SEC. 5. The owner or owners of any claim or claims, or any mineral lode or vein of gold-bearing ores, or of silver or other valuable minerals, discovered prior to the passage of this act, shall enjoy the same rights and privileges as provided in section four of this act: *Provided, always,* That nothing in this section contained shall be so construed as to conflict with or impair rights heretofore acquired under existing laws.

SEC. 6. Whenever any such discovery claim, as described in section one of this act, shall be presented for record, it shall be the duty of each recorder, in their respective counties, to record for the use and benefit of the common-schools of this territory, one claim, and one claim for the use and benefit of the miners' relief and territorial poor fund, both of which claims shall be recorded in the name of the territory or state (as the case may be) of Colorado, for the use and benefit of the schools, disabled miners, and the poor of the said territory or state of Colorado, as hereinafter provided.

SEC. 7. That upon all mineral lodes or veins of gold-bearing ores, or of silver, or other valuable minerals, discovered in compliance with the provisions of this act, two claims of one hundred feet each, on such lodes or veins, shall be set apart and held by the territory or state of Colorado; one for the use and benefit of the common-schools, and the other for the use and benefit of disabled miners and poor of the territory or state of Colorado, one of which claims shall be located at one extremity of the discovery claim aforesaid, and shall be known and described as number one east; and the other of such claims, at the opposite extremity of the discovery claim aforesaid, and shall be known and described as number one west, giving and granting unto the discoverer or discoverers, the right and privilege of designating the location of each of the reserved claims as herein-before specified.

SEC. 8. No claim shall be taken or recorded upon any lode or vein by virtue of one discovery, other than by the person or persons who shall discover the same, and the claim taken for the benefit of schools, and the claim taken for the benefit of disabled miners and the poor of the territory or state, as aforesaid; and if any lode or vein shall extend beyond the limits, as hereinafter specified, that portion thereof lying without the limits aforesaid, shall be deemed open to discovery, and may be taken and held in the same manner as the claims first taken thereon.

SEC. 9. That the county recorder in each and every county to which the provisions of this act may apply, shall be allowed the sum of four dollars for recording and issuing a certificate of pre-emption for such discovery claim of fourteen hundred feet, and the sum of two dollars for entering the same on any abstract of title, and the sum of twenty-five cents for each and every transfer thereafter entered on said abstract; and the fees for the claims taken for the benefit of schools, and the miners' relief and territorial poor fund, shall be included in said sum of four dollars; and every certificate so issued shall bear the impress of the seal of the county in which the property is situated.

SEC. 10. It shall be the duty of each and every county recorder to report to the county treasurer, on the first day of every month, all claims (not previously reported) which may, in their respective counties, have been taken or recorded for the use and benefit of the disabled miners' and territorial poor fund; and upon application to the county commissioners by the county treasurer of the county in which said claims may lie, the county commissioners shall proceed to name the price or sum of money for which each of the different claims may be bonded, sold or leased.

SEC. 11. That whenever the county commissioners shall have fixed the price or sum of money for which any claim or claims may be bonded, sold or leased, they may instruct the county treasurer to sell, bond or lease, as the case may be, any or all such claims so appraised by the county commissioners aforesaid: *Provided, always,* That no bond shall be given for a term longer than one year, and no lease for a term longer than four years.

SEC. 12. It shall be the duty of each and every county treasurer, in their respective counties, having the control of any claims taken or recorded under the provisions of this act for the miners' relief and territorial poor fund, in the execution of each and every lease, to take good personal securities from each of the lessees, for the faithful payment of the sums mentioned in the lease, said amount to be paid semi-annually.

SEC. 13. That should a sale at any time be made of any of the claims taken or recorded for the use and benefit of the miners' relief and territorial poor fund, the county treasurers, in their respective counties, where such claims may lie, are hereby authorized and empowered to make the transfer by signing the deed in their official capacity, and said transfer, so executed, shall constitute a true and valid title.

SEC. 14. That the county treasurers, in their respective counties, in each of the several counties of this territory, are hereby authorized and empowered to employ, at a just and reasonable compensation, legal counsel to conduct any and all suits in any of the courts of this territory, growing out of, or under, the provisions of this act, and relating to all such claims, which, by and under the provisions of this act, belong to the miners' relief and territorial poor fund.

SEC. 15. That the county treasurers in each of the said counties of this territory, shall keep a correct account of all money, or sums of money, received by them, by, through or under the provisions of this act, and shall, after deducting the compensation, as hereinafter provided, transmit on or before the first day of December and the first day of June, in each year, to the territorial treasurer, all remaining funds or property belonging to the miners' relief and territorial poor fund, and shall accompany the same with a full and complete report of all transactions relative to the same.

SEC. 16. The several county treasurers aforesaid, shall each of them receive, as a compensation for their services, in the faithful execution of their duties, under the provisions of this act, as provided in sections nine, ten, eleven and fourteen, of said act, ten per cent. of all sums collected or received by them from the sale or lease of said claims, or from any source whatsoever, growing out of, or under the provisions of this act: *Provided, however,* That the compensation accruing therefrom does not exceed one thousand dollars annually.

Sec. 17. That whenever the county commissioners of any county to which the provisions of this act may apply, shall deem the amount of bond previously given by the county treasurer insufficient, they may require of such county treasurer additional bonds, with security, to be approved by them, in such sum as they may deem proper and necessary to insure the faithful execution of the trust confided in such treasurers by the terms of this act.

Sec. 18. That if any person, of the class of persons known to be miners, shall be disabled in the pursuit of his occupation as a miner, he shall be entitled to receive, out of the funds raised under the provisions of this act, a sum sufficient to pay his necessary expenses, incurred by reason of his disability or injury so incurred, including necessary medical attendance: *Provided, however,* That at the time such injury or disability shall occur, there shall be funds in the treasury to meet such expenditure.

Sec. 19. Any person claiming, under the provisions of this act, the benefit of the miners' relief and territorial poor fund, shall make his application for relief to the treasurer of the proper county, who, after he shall be satisfied that the claim is just and proper, shall allow the same, and draw his order for the amount thereof, upon the territorial treasurer, who shall pay the same out of any funds in his possession, belonging to the miners' relief and territorial poor fund.

Sec. 20. That no money shall be used or paid out of the miners' relief and territorial poor fund, by the territorial treasurer, in any other manner than hereinbefore provided, until the close of each fiscal year, when one half of the funds raised by this act and remaining in the hands of the territorial treasurer, may be appropriated to the benefit of the poor of the territory, in such manner as may be provided for by existing laws.

Sec. 21. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its passage.

Approved February 9, 1866. Laws 1866, p. 72.

An act to enable Soldiers in the United States Service to acquire and hold Mining and other Claims.

Be it enacted by the Council and House of Representatives of Colorado Territory:

Section 1. That all citizens of this territory now engaged in the naval or military service of the United States, or who may hereafter enter said service, shall, during the time such persons are engaged in such service, and for one year thereafter, have and enjoy the same rights to acquire and hold claims for agricultural, mining, and other purposes, as citizens of this territory who may not be in such service, and in the absence of any such person so engaged in such service, any such claim or claims may be acquired and held by the agents of such person in the same manner as if such person were personally present.

Sec. 2. Before any agent shall be allowed to enter any claim or claims as aforesaid, he shall, before the recorder of the county wherein such claim or claims are situate, or before some officer authorized to administer oaths, make affidavit that the person for whom the said claim or claims are about to be entered, is a citizen of this territory, actually in the military service of the United States, and that such claim or claims are entered *bona fide* for the benefit of such soldier.

Sec. 3. That all acts and parts of acts, as well as all local or district laws, inconsistent or conflicting herewith, are hereby repealed and rendered inoperative and void.

Approved March 5, 1864. Laws 1864, p. 155.

An act to define the extent of Mineral and Quartz Lodes.

Be it enacted by the Council and House of Representatives of Colorado Territory:

Section 1. That all mineral and quartz lodes, hereafter discovered, shall cease and terminate, so far as they have any legal existence, at the distance of eight hundred feet in either direction, on the line of the lode, from the centre of the discovery hole.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved March 11, 1864. Laws 1864, p. 120.

See also An act to create a Fund for the benefit of Schools, approved August 15, 1862, at the end of the chapter concerning Schools.

CHAPTER LXIII.

MISCELLANEOUS LAWS.

SECTION

I.—*Assay Office.*

1. Assay office established at Central City, Gilpin county.
2. Annual appropriation of $4,000 to defray expenses.
3. Assayer to be appointed by governor, with consent of council; term of office; bond; removal.
4. Seal.
5. Assayer to receive specimens of ore and preserve same.
6. To assay ores; fees.
7. To keep a record of assays; record public; penalty for alteration or mutilation.
8. To furnish certificates of assay; fees.
9. To make report annually to governor; governor to present report to legislature.
10. To pay all moneys received for assays, into territorial treasury.
11. Assayer to receive $2,500 per annum as his salary.
12. Residue of above appropriation, how disposed of.
13. Office, furniture, etc., to be provided by secretary.
14. Furnaces and apparatus of office the property of territory.
15. This act in force from its passage.

II.—*Criminal Code.*

1. Amendment to section 185, criminal code.
2. Amendment to section 212.

III.—*Justices and Constables.*

1. Amendment to section 31, of the act of October 31, 1861.
2. Amendment to section 7, of the act amendatory of the above.
3. This act in force from its passage.

IV.—*Military Fund.*

1. Governor to appoint commissioner to settle with the United States, and receive all moneys due to territory, etc., for military services in the years 1864-65.
2. Commissioner to give bond.
3. Commissioner, upon information of the adjustment of such claims, to proceed to Washington and receive money.
4. To pay over money received, forthwith.
5. In case money received from the United States is not sufficient to pay the certificates of indebtedness issued for military service, the same to be paid *pro rata;* for balance of principal and interest, auditor to issue a new certificate.
6. Compensation of commissioner three per cent. of money received.

SECTION

7. Commissioner to report to governor within sixty days after receipt of money.
8. At the expiration of eighteen months, commissioner to pay all unclaimed moneys into territorial treasury.
9. This act in force from its passage.

V.—*Penitentiary.*

1. Penitentiary located at Canyon City, Fremont county.
2. Governor to appoint commissioners to select site.
3. Duty of Commissioners; site to contain at least twenty-five acres, to be capable of irrigation and cultivation; to be conveyed to territory; commissioners to report to governor; governor to transmit report and plat to secretary of interior.

VI.—*Publication of Revised Statutes.*

1. Commissioner appointed to superintend publication of revised statutes; chapters to be arranged and numbered; public statutes of this session to be printed therewith; notes of statutes repealed, etc.; index.
2. Compensation.

VII.—*Publication of Revised Statutes.*

Verbal amendments of the revision of the statutes, or of any prior statutes embodied therein, by act of this session, to be made in the printed edition of said revision; amendatory act to be published under title of Miscellaneous Laws.

VIII.—*Practice.*

1. Where no officer of a corporation found, service of process against corporation may be made on stockholder.
2. In force from its passage.

IX.—*School-Tax.*

1. After school-tax levied, matter not to be reconsidered after posting of assessment lists.
2. In force from its passage.

X.—*Stock.*

Act of January 27, 1866, amending act of November 6, 1861, repealed.

XI.—*Wolves.*

1. One dollar premium for every wolf killed.
2. Scalp of wolf to be produced to clerk; oath.
3. Clerk to destroy scalp, and give the taker a certificate; form of certificate; certificate to be taken by collector of taxes in payment of taxes.
4. Clerk to keep registry of scalps.
5. Fees of clerk.

An act to establish a Territorial Assay Office in the Territory of Colorado.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That there shall be established a territorial assay office, which shall be called the "Colorado assay office," and be located at Central City, Gilpin county.

SEC. 2. There shall be appropriated by the territory of Colorado the sum of four thousand dollars per annum to defray the expenses of said office.

SEC. 3. The territorial assayer shall be appointed by the governor of the territory, by and with the consent of the council, and shall hold the office for the term of two years, unless sooner removed for misconduct or neglect of duty, and shall give bond in the sum of five thousand dollars, to be approved by the governor and secretary, conditioned for the faithful performance of his duties; and in case the said territorial assayer shall fail to perform his duties as hereinafter provided, he shall be removed by the governor of the territory, and his successor shall be appointed by the governor, subject to the approval of the council.

SEC. 4. The territorial assayer shall have a seal bearing the name of the "Colorado assay office," which shall be kept in the office and be used by him expressly for the use of said office.

SEC. 5. It shall be the duty of the territorial assayer to receive all specimens from lodes situated in the territory of Colorado, from any resident of the territory presenting the same, accompanied by a certificate certifying the lode from whence it was taken, where situated, depth of shaft and width of crevice, and keep them in proper condition, properly labeled, for the inspection of the public during the usual business hours of the day.

SEC. 6. It shall be the duty of the territorial assayer to make assays of all minerals from any portion of Colorado territory, presented to him, provided said specimens of ore shall be accompanied by the proper certificates. Any person presenting ore for assay shall have said ore, when presented, accompanied by an affidavit, taken before any justice of the peace, notary-public, or any other person authorized to take affidavits, stating the location of the lode, depth of shaft and width of crevice. And said territorial assayer shall receive the sum of two dollars for each assay made, giving a certificate of the assay so made, bearing the seal of said office, signed by himself.

SEC. 7. It shall be the duty of the territorial assayer to keep a book, with a proper index, alphabetically arranged, in which he shall record all assays made, giving the name of the person presenting, name of lode, where situated, depth of shaft and width of crevice from which the ore was taken; the kind of mineral, gold, silver, copper, etc., whether sulphuret, etc., with the ores metallurgically classified, and the amount such ore yields per ton, with all other information which may be serviceable in making a statistical table of the mineral resources of Colorado territory; access to said book to be had by the public during business hours; and any mutilation or changing of the record on said book shall be punishable by the penalty now regulating county records of Colorado territory.

SEC. 8. It shall be the duty of the territorial assayer to furnish to any owner of any mine within the territory of Colorado, which has been developed so far as to show the existence of gold, silver, copper, or lead-bearing ores therein, under his hand and the seal of his office, any information touching the richness of the ore in such mine, provided ore from said mine has been assayed by him; and for the same shall receive the sum of one dollar for each abstract of lode so made.

SEC. 9. It shall be the duty of the territorial assayer to make a report of all assays and examinations made during the year, annually, to the governor of Colorado territory, who shall report the same to the legislature of said territory.

SEC. 10. It shall be the duty of the territorial assayer to pay all moneys received for assays or abstracts made by him quarterly, into the territorial treasury.

SEC. 11. The territorial assayer shall receive the sum of twenty-five hundred dollars per annum, for his services, payable quarterly by the territorial treasurer, upon the order of the territorial assayer, countersigned by the secretary of the territory.

SEC. 12. The remaining fifteen hundred dollars of said appropriation shall be paid by the territorial treasurer, upon the order of the territorial assayer, countersigned by the secretary of the territory, and be used by said assayer to erect the necessary furnaces, to purchase the necessary chemical apparatus, the chemicals and other materials to properly make the assays or examinations, and the necessary hire of assistants that may be required in the proper performance of his duties, and for the proper preparation of an office for the display of specimens of ores.

SEC. 13. The necessary room or rooms, fuel and stationery for the assay office and laboratory of the territorial assayer are to be provided by the secretary of the territory, from the fund mentioned and provided for in section twelve.

SEC. 14. The furnaces erected, and apparatus and materials purchased out of the fund mentioned in section twelve, shall be the property of the territory of Colorado.

SEC. 15. This act shall take effect and be in force from and after its passage.

II.

An act concerning Criminal Jurisprudence.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That section one hundred and eighty-five of the chapter concerning criminal jurisprudence, in the revised statutes, as passed at the present session of the legislative assembly, be and hereby is amended so as to read as follows: "This chapter shall extend to females committing any of the offences herein enumerated and defined, although they be not expressly named. Infants under the age of twelve years shall, for all offences the penalty whereof is imprisonment, be punished by confinement in the county-jail for a period not exceeding two years; and in all cases whatsoever, where the punishment for any offence herein enumerated is imprisonment, and such punishment is discretionary in amount, the court before which conviction of such offence is had, shall fix the term of such imprisonment."

SEC. 2. Section two hundred and twelve of the chapter concerning criminal jurisprudence, in the revised statutes, as passed at the present session of the legislative assembly, be and hereby is amended so as to read as follows: "Every person arraigned for any crime punishable with death, shall be admitted on his trial, to a peremptory challenge of ten jurors, and no more; and every person arraigned for any offence that may be punishable by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of six jurors, and in all other criminal cases the defendant shall be allowed a peremptory challenge of three jurors. The attorney prosecuting on the part of the people, shall be admitted to a peremptory challenge of the same number of jurors that the accused is entitled to, and no more."

III.

An act to amend An act concerning Justices of the Peace and Constables.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That section thirty-one of said act be amended by inserting after the word "immediately," "on payment of all costs accruing up to the time the change of venue is taken."

SEC. 2. That section seven of An act amendatory of an act entitled An act concerning justices of the peace and constables, be and the same is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

IV.

An act providing for the appointment of a Commissioner to receive any Money due the Territory of Colorado from the Government of the United States for Military Services.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That the governor of the territory of Colorado shall, at the present session of the legislative assembly of the said territory, appoint, and the legislative council confirm the appointment of some person, a citizen and resident of the territory, a commissioner on behalf of said territory, to settle with the government of the United States, and receive therefrom any money which may be allowed to the territory, counties, or individuals, by the war department, for military services during the years eighteen hundred and sixty-four and eighteen hundred and sixty-five.

SEC. 2. The commissioner appointed as aforesaid, before he enters upon the duties of his appointment, shall give bonds, with security, to the territory, in the penal sum of two hundred thousand dollars, to be approved by the secretary of the territory, conditioned for the faithful performance of the duties imposed by the act, and shall be commissioned by the governor.

SEC. 3. It shall be the duty of the commissioner appointed as aforesaid, as soon as information is received that the claims of the territory have been adjusted, and that the secretary of the treasury is ready to pay the same to a duly authorized agent of this territory, to proceed to Washington and receive the money aforesaid.

SEC. 4. It shall be and is hereby made the duty of said commissioner, forthwith after he shall have received said money from the secretary of the treasury, to adjust and pay the said money to the individuals, to the territory, and to the counties to which the same is due, in the true and just proportion which the whole amount of money received by said commissioner bears to the amount of money expended by the counties, or is due to individuals, or the territory of Colorado, for military services.

SEC. 5. If it shall appear that the amount of money received from the government, allowed for the monthly or *per diem* pay of the men who performed military duty in the service of the United States, and for which certificates of indebtedness have been issued by the territory, is not sufficient to pay the indebtedness assumed by the territory, then the amount so allowed shall be paid *pro rata* on such certificates of indebtedness; and the balance remaining unpaid, principal and interest, shall be payable to the party holding said certificates, and it shall be, and is hereby made the duty of the auditor of the territory to take up said certificates and cancel them, and issue new certificates in their stead.

SEC. 6. Said commissioner shall receive as compensation for the services as aforesaid, three per cent. of the amount received, to be deducted from the whole amount by him received from the secretary of the treasury.

SEC. 7. Said commissioner shall, at the expiration of the sixty days after he shall have received the money aforesaid, or as soon thereafter as practicable, make to the governor of the territory a full and complete report of his execution of said trust, which said report shall thereupon be published by the governor.

SEC. 8. Said commissioner, so appointed, shall, at the expiration of eighteen months after he shall have received the money aforesaid, pay into the treasury of Colorado territory any and all unclaimed money remaining in his hands at the expiration of said time.

SEC. 9. This act shall take effect and be in force from and after its passage.

V.

An act to locate the Site and establish a Penitentiary for the Territory of Colorado.

[*Approved January* 7, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That the penitentiary for the territory of Colorado shall be and the same is hereby located and established at Canyon City, in the county of Fremont, in said territory.

SEC. 2. That the governor of the territory of Colorado, with the advice and consent of the legislative council of said territory, shall, at the present session of the legislative assembly, appoint three persons, commissioners on behalf of the territory, to select a site, not more than one half mile from the business centre of said Canyon City, for the erection of a penitentiary for said territory.

SEC. 3. The persons appointed as aforesaid in section two of this act, shall, within sixty days after the date of their appointment, proceed to select a site for a penitentiary for said territory, as aforesaid, which site shall contain not less than twenty-five acres of land; and if the site so selected shall, within sixty days after the same is so selected and established by said commissioners, be conveyed to the territory of Colorado by the person or persons holding title thereto in fee-simple absolute, without charge, so as to vest the title to the same in the territory of Colorado, the site so selected shall be and remain the property of said territory for the purpose of erecting a penitentiary and other public buildings thereon: *Provided, however*, That said commissioners shall select a site which is capable of irrigation and cultivation, and make a plat of the same and its contiguous surroundings, and report to the governor of this territory the nature of the soil, the character of building material, and the feasibility of cultivation and irrigation of said soil; and upon the reception of the report of said commissioners by the governor, it shall be his duty to transmit the plat of the land so selected by said commissioners, together with their report and a copy of this act, for the approval of the secretary of the interior, according to law.

VI.

An act to provide for the Publication of the Revised Statutes of Colorado Territory.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That E. T. Wells, of Gilpin county, is hereby appointed to superintend the publication of the revision of the general statutes of the territory, as the same may be finally adopted. He shall arrange and number the several chapters and articles therein contained, together with the statutes of a general and public nature passed at the present session of the legislative assembly, and so far as the secretary of the territory may be authorized by law to permit the printing thereof, notes of all prior statutes upon the same subject, which have been repealed, of judicial decisions upon those statutes which have been adopted from other states, and the text of all prior statutes of temporary operation, whereon depend titles heretofore accrued. He shall also prefix to each chapter of the said revision, a brief note of the contents thereof, by sections, and shall prepare an index of the contents of said revision and the other statutes which may be printed therewith, to be printed at the end thereof.

SEC. 2. For the preparation of said revision and preparing the same for publication, as herein above provided, said Wells shall receive the sum of three thousand dollars, to be paid as follows: Upon the approval of this act, the auditor of the territory shall draw his warrants upon the territorial treasurer for the sum of two thousand dollars, in favor of said Wells, and payable out of any moneys in the treasury not otherwise appropriated. Whenever the said revised statutes have been published, upon production to the auditor of the certificate of any two justices of the supreme court that they have examined the printed edition thereof, and that the same are arranged and printed as herein provided, the said auditor shall draw his warrant upon the treasurer, in favor of said Wells, for the sum of one thousand dollars, payable in like manner, out of any moneys in the treasury not otherwise appropriated.

SEC. 3. This act shall take effect and be in force from and after its passage.

VII.

An act to further provide for the Publication of the Revised Statutes.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory, as follows:

Whenever by any act passed at the present session of the legislative assembly, it is provided that in any prior statute of this territory, which has been embodied in the revised statutes, as passed at the present session of the legislative assembly, or in any chapter, article, or section of said revised statutes, any word or phrase be stricken out, or any word or words or phrase be inserted, or any word or words or phrase or provision be stricken out, and other words, phrases, or provisions inserted in lieu thereof, the person appointed to superintend the publication of the revised statutes, shall be and is hereby authorized to make such changes as are required by such amendatory act passed, or to be passed, at this session, in the text of the printed edition of the said revised statutes, and such amendatory act shall be printed in the said revised statutes under the title of "Miscellaneous Laws."

VIII.

An act to amend an act entitled An act concerning Practice in Civil Cases, approved November 5, 1861.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. Section four of the act to which this is amendatory, shall be amended as follows, viz.: By inserting after the word "persons," in the last line of said section, the following: *Provided*, That if there shall be no such president, clerk, secretary, cashier, or agent of said company to be found in said county the summons aforesaid shall be served on some stockholder of said company, and such service shall, in such cases, be deemed as effectual and valid as if made on any of the officers of said company.

SEC. 2. This act to take effect from and after its passage.

IX.

An act in regard to the Collection of School-Tax.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. Whenever any school-district tax has been voted at any meeting of such district, it shall not be lawful, after the posting the assessment lists of property whereon such tax is to be levied, to reconsider the question of the levy of such tax.

SEC. 2. This act shall take effect and be in force from and after its passage.

X.

An act to repeal an act entitled An act to amend an act entitled An act to prevent the introduction of Animals for the purpose of Grazing within certain Limits, approved November 6, 1861, approved January 27, A. D. 1866.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

That the act approved January 27, A. D. 1866, entitled An act to amend an act entitled An act to prevent the introduction of animals for the purpose of grazing within certain limits, approved November 6, 1861, be and the same is hereby repealed.

XI.

An act to encourage the Destruction of Wolves.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. Any person who shall kill or take, or cause to be killed or taken, by any person in his or their employ, any wolf or wolves within this territory, shall receive a premium of one dollar for every wolf killed or taken.

SEC. 2. Any person claiming such reward shall produce the scalp, with the ears entire, to the clerk of the county court of the county in which the wolf or wolves are killed or taken, within one month thereafter, whereupon said clerk shall administer to such person the following oath or affirmation: You do solemnly swear (or affirm) that the scalp, or scalps, produced by you are of wolves killed or taken by you, or some person in your employ, within this territory, within one month last past. And the said clerk may put any other questions touching the truth of the matter, as he thinks fit.

SEC. 3. The clerk shall forthwith destroy such scalp or scalps and give the person proving up the same, under the hand and seal of said clerk, a certificate setting forth in words, in a plain and legible hand-writing, without interlineation, the number of scalps and the name and residence of such person; which certificate shall be in the following form, viz.:

Territory of Colorado, county of ——, SS. This is to certify that ——, in the county of ——, did this day prove before me —— wolf scalps, and is entitled to the sum of —— dollars. Given under my hand, this —— day of ——, A. D. 18—. A. B., Clerk of county court.

Which aforesaid certificate shall be received and taken in by the collector of the revenue of the county in which the same was given, and such collector shall be allowed pay out of the territorial treasury for the same; but in no case shall the amount paid for scalps exceed the amount of the revenue paid into the territorial treasury by said county.

SEC. 4. Such clerk shall keep a registry of all such scalps, in a book which he shall keep for that purpose, in which he shall note down every certificate granted, the number of scalps proven, the date when, and persons by whom proven, and shall transmit a certified copy of such registry, under the seal of the court, to the treasurer of the territory, who shall not allow and pay any such certificate which shall not correspond with such registry.

SEC. 5. Such clerk shall receive for his services as aforesaid, fifty cents for each certified copy of the registry, and the regular fee for his seal, to be paid out of the treasury of the proper county.

CHAPTER LXIV.

NOTARIES.

SECTION
1. Notaries to be commissioned in each county; term of office.
2. Powers and duties of.
3. To keep a record of official acts.
4. Notary dying, resigning, etc., official papers to be delivered to register of deeds.
5. Official acts of notary to be attested by seal.
6. Notary to give bond, and take an oath.
7. Bond with oath indorsed, to be filed in the office of register of deeds; suit may be instituted on bond; limitation.

SECTION
8. Notary may administer oaths, and take acknowledgments.
9. Official acts of notaries holding commissions under Kansas, confirmed.
10. Notary to protest bills, notes, etc.; to give notice.
11. Notary to keep a record of such notices and time, and manner of service; record proof of notice.
12. Personal service of notice, when to be made; by mail when.

SECTION 1. The governor shall appoint and commission in each county, as occasion may require, one or more notaries-public, who shall hold their office for four years unless sooner removed.

SEC. 2. They may receive the proof or acknowledgment of all instruments of writing relating to commerce and navigation, receive and authenticate the acknowledgments of deeds and powers of attorney, make declarations and protests, and do all other acts usually done and performed by notaries-public, in other states and territories, and certify the truth of all their official acts under their official seal.

SEC. 3. Every notary-public shall keep a fair record of his official acts, and if required, give a certified copy of any record in his office, upon the payment of the fees therefor.

SEC. 4. If any notary die, resign, become disqualified or remove from his county, his record, and the official and public papers of his office shall, within thirty days be delivered to the register of deeds of his county.

SEC. 5. The official acts of every notary shall be attested by his notarial seal, which shall, as heretofore, consist of an impression upon paper or wax, setting forth the name and residence of such notary.

SEC. 6. Every notary-public, before entering upon the duties of his office, shall take the oath of office prescribed by law, and shall give bond to the territory of Colorado, in the sum of five hundred dollars with good sureties, conditioned that he will faithfully perform the duties of his office; such bond shall be approved by the county clerk, who shall indorse on every such bond, which he shall approve as follows: "I am acquainted with the securities herein, and believe them to be worth the amount of the penal sum of the within bond, over and above all their just debts and liabilities."

SEC. 7. Such bond, with the oath indorsed thereon, shall be recorded in the office of the register of deeds for the county in which the notary shall reside, and may be sued on by any person injured on account of the unfaithful performance of said notary's duties: *Provided*, That no suit shall be so instituted after three years have elapsed from the time the cause of action accrued.

SEC. 8. Notaries shall have authority to administer all oaths, provided for by law, and to acknowledge all instruments of writing, conveying or affecting real estate or other property ~~in~~ any part of this territory.

SEC. 9. All acknowledgments heretofore taken, and official acts performed by notaries-public holding their commissions under the territory of Kansas, and all acknowledgments heretofore taken by any judge or justice of any organized court, within the limits of this territory, are hereby confirmed and made valid, if otherwise correct.

SEC. 10. It shall be the duty of every notary-public in this territory whenever any bill of exchange, promissory note, or other instrument in writing, shall be by him protested for non-acceptance or non-payment, to give notice in writing thereof to the maker or makers, and to each and every indorser or security on any promissory note, or other instrument in writing, on the same day the protest is made or within twenty-four hours from the time of such protest.

SEC. 11. It shall be the duty of every notary-public in this territory, to keep a correct record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record shall, at all times, be competent to prove such notice, in any trial in any court in this territory where proof of such notice may become requisite.

SEC. 12. It shall be the duty of each and every notary-public personally to serve the notice upon the person or persons protested against: *Provided*, He or they reside in the town where such protest was made, or within one mile thereof; but if such person or persons reside more than one mile from such town, then the said notice may be forwarded by mail or other safe conveyance.

Prior Statutes Repealed. An act relative to Notaries-Public. Approved October 24, 1861. Laws 1861, p. 43.

An act to amend an act entitled An act relating to Notaries-Public. Approved August 15, 1862. Laws 1862, p. 91.

CHAPTER LXV.

OATHS AND AFFIRMATIONS.

SECTION
1. Oath; form of administering.
2. Solemn affirmation; form of; to have the affect of an oath; affirming falsely, perjury.
3. Who may administer oaths; judges, justices of the peace, clerks of courts; notaries-public.
4. Chairman of any legislative committee, or member of any joint committee, of both houses.
5. False oath or affirmation to subject deponent to penalties of perjury.
6. Oaths beyond territory; how made; certified.

SECTION 1. Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any other lawful occasion, it shall be lawful for any person employed to administer the oath, to administer it in the following form to wit: The person swearing shall, with his or her hand uplifted, swear "By the Ever-Living God."

SEC. 2. Whenever any person required to take or subscribe an oath, as aforesaid, and, in all cases where an oath is, upon any lawful occasion, to be administered, and such person shall have conscientious scruples against taking an oath, he or she shall be permitted, instead of taking an oath, to make his or her solemn affirmation or declaration, in the following form, to wit: "You do solemnly, sincerely, and truly declare and affirm;" which solemn affirmation or declaration shall be equally valid as if such person had taken an oath, in the usual form; and every person guilty of falsely and corruptly declaring, as aforesaid, shall incur and suffer the like pains and penalties as are, or shall be, inflicted on persons guilty of wilful and corrupt perjury.

SEC. 3. All courts in this territory, and each judge, justice, and clerk thereof, and all justices of the peace, and notaries-public, shall respectively have power to administer oaths and affirmations to witnesses, and others, concerning anything depending or proceeding commenced, or to be commenced, before them respectively; and the said courts, judges, justices, notaries-public, and clerks, within their respective districts or counties, shall respectively have power to administer all oaths of office, and other oaths required to be taken by any person upon any lawful occasion, and to take affidavits and depositions, concerning any matter or thing, process or proceeding, pending or to be commenced, in any court or before any justice of the peace, or on any occasion, wherein such affidavit or deposition are authorized or required, by law, to be taken.

SEC. 4. The chairman or any member of any committee, appointed by either branch of the legislative assembly of this territory, or any member of any joint committee, appointed by the two houses of the legislative assembly, shall be authorized to administer oaths and affirmations to witnesses, touching any matter or thing which may be under the consideration or investigation of the committee.

SEC. 5. All oaths and affirmations, affidavits and depositions, administered or taken as provided in this chapter, shall subject any person who shall so swear or affirm wilfully or falsely, in matter material to any issue or point in question, to the pains and penalties inflicted by law, for the time being, on persons guilty of wilful and corrupt perjury.

SEC. 6. All oaths and affirmations required or authorized to be taken by any statute of this territory, may, when the person required to make the same, resides out of, or is absent from this territory, be made before, and administered by any notary-public, or clerk of any court of record, of the state wherein such person may be; such notary, or clerk, certifying the same under his notarial seal, or the seal of such court.

Prior Statutes Repealed. An act concerning oaths and affirmations. Approved November 4, 1861. Laws 1861, p. 257.

CHAPTER LXVI.

OFFICIAL BONDS.

SECTION

1. Clerks of district court to give bond; to be approved by judge; condition.
2. May be sued in name of people, to use of any person injured.
3. To be filed in office of secretary; certified copies to be evidence.
4. Bonds of masters, and receivers in chancery.
5. Judge of district court to examine bond of masters in chancery and clerks, at each term of court; if security dead, insolvent, or removed out of county, shall require new bond to be filed, unless bond still sufficient; certified copy of bond to be filed with county clerk.
6. Board of county commissioners to examine bonds of county officers, at each regular term; may require additional bond in certain cases.
7. Probate judge to examine bonds of executors, administrators, and guardians, etc., on first day of terms of court in January and July, or oftener; may require new bond.
8. Any person having any interest may appear and introduce evidence to prove insufficiency of the security in any such bond.
9. Order to be entered of record, setting forth the examination and the result, as to the sufficiency or insufficiency of bond.
10. Officer failing to file new bond, in accordance with such order deemed to have vacated office.
11. How the security in official bonds may procure a discharge therefrom; notice of his unwillingness to continue such security, to be filed with county clerk, in case of county officers, or in case of clerk of district court, with the clerk of such court, and with the judge of the district.
12. Notice of the filing of such notice, to be given to the officer; new bond required; to be filed in ten days.
13. Failure to file bond, deemed to vacate office.
14. Former securities released by the filing of new bond, from and after the approval thereof.
15. For embezzlement, officer liable to indictment; upon judgment of conviction the court shall declare office vacant.
16. County officer failing to give new bond, to deliver to his securities, all money, books, etc., in his hands as such officer.
17. Failure to comply with the foregoing section, or acting or attempting to act in his office, after failure to give bond, when required, in accordance with this chapter, a high misdemeanor; penalty.
18. Securities not released by filing of new bond, from previous liabilities.
19. Bonds of sheriffs and coroners; how approved; where filed.
20. Bonds of other county officers; how approved; where filed.
21. Any person may appear and offer evidence as to sufficiency of such bonds.
22. County commissioners to make an entry recording the approval of any official bond, approved by them; bonds to be recorded.
23. Failure to inquire into the sufficiency of bonds; penalty.
24. Fines recovered under this chapter to be paid into county treasury for the use of common schools.

SECTION 1. The clerks of the district court of this territory be and they are hereby required to execute a bond to the people of the territory of Colorado, in the penal sum of five thousand dollars each, with sufficient security, to be approved by the judges of their respective districts, conditioned for the faithful performance of their duties as clerk of said court, and that they will punctually pay over to the person legally authorized to receive the same, all moneys that may come into their hands by virtue of the said office.

SEC. 2. The bonds so executed by said clerks, may be sued upon in the name of the people to the use of any person or persons injured by their breach, in any court of competent jurisdiction.

SEC. 3. Every such bond shall, before such clerk shall enter upon the duties of his office, be filed in the office of the secretary of the territory, and copies thereof certified by the secretary under the seal of the territory, shall be received as evidence, without proof of the execution of the original, in all courts of this territory.

SEC. 4. All bonds required by law, or the courts of equity, to be executed by masters or receivers in chancery, shall be executed to the people of the territory of Colorado, as obligee, and may be prosecuted by any person or persons, in the name of the people of the territory, for the use of the person aggrieved.

SEC. 5. It shall be the duty of the presiding judge of the district court of each district or county in this territory, in open court, on the first day of each term of said court, to examine and inquire into the sufficiency of the official bonds of the clerk of said court, and of each of the masters in chancery thereof, and if it shall appear that any one or more of the securities on any such official bond, has or have removed from the county or district, died or become insolvent, or are of doubtful solvency, an order shall be entered of record, requiring such clerk or master, within such time as may be fixed by the court, not less than five, nor more than ten days, from the entry of such order, to file a new bond, with securities, to be approved as is now required by law, unless the number and pecuniary ability of other securities on the bond, shall be such as to satisfy the said judge that the said bond is sufficient, notwithstanding one or more of the securities may have removed, died, become insolvent, or of doubtful solvency, in which case the bond in question may, in the discretion of said judge, be held to be sufficient. In order that such examination may conveniently be made, every clerk of the district court shall procure and cause to be filed in the office of the clerk of each county in his district, a duly certified copy of such official bond.

SEC. 6. It shall be the duty of the board of county commissioners of each county, at each regular term, on the first day of each term, to examine and inquire into the sufficiency of the official bond of the probate judge, justices of the peace, constables, county treasurer, sheriff, coroner, county assessor, county clerk, and county surveyor, and all other official bonds, given or to be given by any county officer as required by law; and if it shall appear that any one or more of the securities on the official bond of any such county officer has or have removed from the county, died, or become insolvent, or of doubtful solvency, the said board of county commissioners shall cause such probate judge, justice of the peace, sheriff, coroner, constable, county treasurer, county clerk, assessor, county surveyor, or other county officer, to be summoned to appear before said board, on a day to be named in said summons, to show cause why he should not be required to give a new bond with sufficient security; and if at the appointed time he should fail to satisfy said board as to the sufficiency of the present security, an order shall be entered of record by said board, requiring such probate judge, justice of the peace, sheriff, coroner, constable, county treasurer, county clerk, assessor, county surveyor, or other county officer, to file in the office of the county clerk, within twenty days, a new bond, to be approved as required by law, unless the number and pecuniary ability of other securities on the bond shall be such as to satisfy the said board that the bond is sufficient notwithstanding one or more of the securities on said bond may have removed, be dead, insolvent, or of doubtful solvency; in which case the bond in question may, in the discretion of said board be held to be sufficient.

SEC. 7. It shall be the duty of each probate judge twice in each year, and at the terms of said court to be holden on the first Mondays in January and July, or oftener, if, in the discretion of said judge, necessary, in open court, on the first day of such term, to examine and inquire into the sufficiency of the official bond of each executor, administrator and guardian, and of any other official bond which may be filed in his office; and if it shall appear that any one or more of the securities on the official bond of any such executor, administrator, guardian, or other officer or person, has or have removed from the county, died, or become insolvent, or of doubtful solvency, the said probate judge shall cause such executor, administrator, guardian, or other officer, or person, to be summoned to appear before him, on a day to be named in said summons, to show cause why he should not be required to give a new bond with security; and if, at the appointed time, he should fail to satisfy such probate judge, of the sufficiency of the present security, an order shall be made on the records of said probate court, requiring such executor, administrator, guardian, or other officer or person, to file in the office of the probate judge, a new bond, to be approved as required by law, unless the number and pecuniary ability of other security on the bond, shall be such as to satisfy said probate judge that the bond is sufficient, notwithstanding one or more of the securities on said bond may have removed, or be dead, or insolvent, or of doubtful solvency; in which case the bond in question, may, in the discretion of such probate judge, be held to be sufficient.

SEC. 8. Any person having any pecuniary interest in the sufficiency of the official bond of any of the officers or persons hereinbefore named, may appear at the prescribed time and place, and shall be allowed to introduce any evidence legally conducing to prove the removal, death, insolvency, or doubtful solvency of any security on such official bond, and the officer or person interested, or any of his securities, may also appear and introduce any evidence legally conducing to establish the sufficiency of such official bond.

SEC. 9. It shall be the duty of the judge of said district court, judge of probate, and board of county commissioners, abovenamed, to enter upon their respective records at the time hereinbefore prescribed for an examination, that an examination and inquiry into the sufficiency of the official bonds within their cognizance has been made, and that they severally are deemed sufficient, or insufficient as the facts may justify.

SEC. 10. If any officer or person hereinbefore enumerated, shall fail to file a new bond within the prescribed time, when so required, under the provisions of this chapter, by an order entered of record requiring the filing of such new bond, the officer in default shall be deemed and held to have vacated his office, and the same steps shall be taken to fill such vacancy thus created, as are now taken to fill a vacancy by the death or resignation of such officer.

SEC. 11. Any person who now is or may hereafter become the security of any sheriff, coroner, probate judge, justice of the peace, county clerk, constable, county treasurer, county surveyor, or other county officer, shall have the power of releasing himself from further liability as such security for such officer, by filing in the office of the county clerk, a notice that he is unwilling longer to be security for such sheriff, coroner, probate judge, justice of the peace, county clerk, assessor, county treasurer, county surveyor, or other county officer: *Provided, however*, If the person so desiring to be released from such securityship, shall be security for the county clerk, he shall, in addition to the above notice, deliver a copy of the same to the chairman of the board of county commissioners, or if he be absent, to some other member of said board. Any person who now is or may hereafter become security on the official bond of the clerk of the district court, or master in chancery, may, in like manner, become released by filing a notice in the office of said clerk of the district court in like manner and also delivering a copy thereof to the judge of said court.

SEC. 12. When any notice shall be filed, as aforesaid, with the county clerk, he shall immediately give notice thereof to such sheriff, coroner, probate judge, or other county officer as the case may be, who shall thereupon file other security to be approved by the board of county commissioners, if the same shall then be in session, or if a session thereof be commenced within ten days after notice shall have been given; but if said board be not in session, nor a session thereof to be commenced within ten days thereafter, then the said sheriff, coroner, probate judge, justice of the peace, or other county officer, as the case may be, shall, within ten days, file said bond with the county clerk, which said clerk shall, in such case, judge of the sufficiency of said bond, subject, however, to the decision and approval of said board of county commissioners at their first meeting thereafter, as in other cases: *Provided, however*, If such notice relate to the security of the county commissioner to whom the copy of such notice is given, immediately to require said clerk to file other security, to be approved by the board of county commissioners in like manner as aforesaid; but if said board be not in session, then, in such case, the county commissioner to whom such notice may be given, may approve such security, subject, however, to the decision and approval of said board at their first session thereafter, as in other cases; and in case such notice relate to the security of the clerk of the district court, or any master in chancery thereof, it shall be the duty of the judge of said court forthwith upon receiving such notice to require such master in chancery, or clerk to file, within ten days, other security to be approved by him as in other cases.

SEC. 13. If said clerk of the district court, master in chancery, sheriff, coroner, probate judge, justice of the peace, constable, county treasurer, assessor, county clerk, county surveyor, or other officer, as the case may be, shall not, in the time and manner aforesaid, file bond to be approved as aforesaid, the said office shall become vacant, and the said vacancy shall be filed in manner as is now provided by law.

SEC. 14. If a new bond shall be given by any officer as provided in the foregoing sections of this chapter, then the former securities shall be entirely released and discharged from all liabilities incurred by any such officer, in consequence of business which may have come to hand from and after the time of the approval of the said new bond, and the securities to the new bond are hereby declared to be liable for all official delinquencies of said officer, whether of omission or commission, which may occur after approval of the new bond as aforesaid.

SEC. 15. If any sheriff, master in chancery, clerk of the district court, coroner, probate judge, justice of the peace, constable, county treasurer, assessor, county clerk, or other officer, shall embezzle or appropriate to his own use, any money which may be paid to him by virtue of his office, he shall be liable to be indicted therefor, and, upon conviction thereof, the court pronouncing such judgment of conviction, shall, as a part of such judgment, declare the office held by such officer vacant, and such vacancy shall be filled as now provided by law.

SEC. 16. It shall be the duty of such master in chancery, clerk of the district court, sheriff, coroner, judge of probate, justice of the peace, constable, county treasurer, county assessor, county clerk, or other officer, if he shall fail to give bond as provided for in this chapter, to deliver over to his securities forthwith, all books, moneys, vouchers, papers, and every description of property whatever, pertaining to his said office; and the said sureties may at any time after said failure to file said bond, maintain an action of replevin, or other appropriate action to recover such property, money or effects, from their said principal.

SEC. 17. If any officer designated in the foregoing sections of this chapter shall fail to deliver any money, property, or effects as aforesaid to his securities, or shall act or attempt to act in the performance of the duties of his said office, after failing to give a new bond as aforesaid, he shall be deemed guilty of a high misdemeanor, and, upon indictment and conviction therefor, shall be fined in any sum not less than five hundred dollars, nor more than five thousand dollars.

SEC. 18. The provisions of this chapter shall not be so construed as to operate as a release on the securities of any of the aforesaid officers, for liabilities incurred previous to the filing of a new bond, as required in the foregoing sections of this chapter.

SEC. 19. Hereafter the official bond of all sheriffs and coroners of this territory shall be filed in the office of the county clerk, and approved by the board of county commissioners, in manner as now required by law, in open session, at their first meeting after the filing of such bond: *Provided*, If said board of county commissioners be not in session, when said bond shall be filed, then the county clerk shall judge of its sufficiency, subject to the final decision and approval of said board at their first meeting thereafter.

SEC. 20. Hereafter all probate judges, justices of the peace, constables, county treasurer, assessor, county clerk, or any county officer, elected according to the laws of this territory, shall file their official bonds in the office of the county clerk, which said bond shall be executed as required by law, and shall be approved by the board of county commissioners in open session: *Provided*, If said board be not in session on the filing of such bond, then the county clerk shall judge of its sufficiency, subject however to the final decision and approval of said board at their first meeting thereafter: *And, provided further*, That if said board be not in session, the county clerk, in filing his bond as aforesaid, shall present the same to the chairman of the board of county commissioners, or in case of his absence or inability to act, to one of the other members of said board, who shall judge of its sufficiency, subject as aforesaid, to the decision and approval of said board at their first meeting thereafter.

SEC. 21. All persons interested may appear before said board of county commissioners, and offer evidence as to the sufficiency or insufficiency of the securities on the official bond of any of the officers named in this chapter.

SEC. 22. It shall be the duty of the board of county commissioners to make an entry in the records of said board, of their approval of all official bonds; and when so approved by said board, the county clerk shall record the same in the records of said county, for inspection by all persons.

SEC. 23. If any board of county commissioners shall wilfully neglect to inquire and examine into the sufficiency of any of the official bonds named in this chapter, they, and each of them, shall be deemed guilty of a public omission of duty, and shall be liable in damages to any person who may receive injury by such neglect, to be recovered before any court of competent jurisdiction in this territory, by an action on the case.

SEC. 24. All fines accruing under the provisions of this chapter, shall be paid into the county treasury, for the use of common-schools of this territory.

Prior Statutes Repealed. An act requiring Clerks of the District Court to give bond. Approved August 15, 1862. Laws 1862, p. 43.

An act concerning official bonds of masters and receivers in chancery. Approved July 30, 1862. Laws 1862, p. 43.

An act relating to the sufficiency of the security on official bonds, and for other purposes. Approved March 11, 1864. Laws 1864, p. 44.

An act to amend An act relative to counties and county officers. Approved March 11, 1864. Laws 1864, p. 66.

An act to amend an act entitled An act requiring Clerks of the District Court to give bond. Approved February 8, 1865. Laws 1865, p. 45.

CHAPTER LXVII.

PARTITION.

SECTION
1. Partition of lands held in common, obtained by petition; where to be brought.
2. Petition; what to set forth.
3. Parties.
4. In case parties unknown, or the share or interest of any party contingent, or unknown, same to be stated.
5. By what description unknown owners made parties.
6. Summons how served; guardians of minors to be served; guardian *ad litem* to be appointed for minors having no guardian; notice by advertisement.
7. Party claiming interest may appear and interplead.
8. Court to determine and declare the rights and interests of parties.

SECTION
9. Commissioners to be appointed to make partition; to take an oath; to go upon premises; report partition at same or succeeding term.
10. Compensation of commissioners.
11. When lands cannot be divided without prejudice, court may order a sale; effect of sale.
12. If on sale, no one claim portion of proceeds belonging to non-residents or unknown persons, court shall require the same to be deposited in treasury of territory.
13. Persons entitled to any such money may have an order for same, on proof of his right.
14. No plea in abatement received in partition.
15. Courts of chancery, powers of in proceeding for partition.

SECTION 1. When any lands, tenements or hereditaments shall be held in joint tenancy, tenancy in common or coparcenary, whether such right or title be derived by purchase, devise or descent, or whether any, all, or a part of such claimants, be of full age, or minors, it shall be lawful for one or more of the persons interested,[1] by themselves, if of full age, or by their guardians, if minors, to present to the district court, of the county where such lands or tenements lie, or where the lands or tenements lie in different counties, in the district court of the county in which the major part of such lands lie; but if the major part of such lands do not lie in any one county, then to the district court of any county in which any of such lands lie; their petition praying for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition cannot be made without prejudice to the owners.

SEC. 2. The petition shall particularly describe the premises sought to be divided, or sold, and shall set forth and make exhibit of the rights and titles of all parties interested therein,[2] so far as the same are known to the petitioners, including tenants for years, for life, by the courtesy, or in dower, and of persons entitled to the reversion, remainder or inheritance, and of every person, who, upon any contingency, may be or become entitled to any beneficial interest in the premises, so far as the

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(1) A petition for partition cannot be maintained by one who has no interest in the lands; as the guardian of an infant minor, suing in his own name. *Bowles* v. *McAllan*, 16 Ill. 30. *Lloyd* v. *Malone*, 23 Ill. 45.

Partition cannot be made upon petition of the widow for assignment of dower. *Lloyd* v. *Malone*, 23 Ill. 45.

(2) A bill in chancery for partition must set forth the title and interest of the petitioner. *Tibbs* v. *Allen*, 27 Ill. 119.

same are known to the petitioners; and such petition shall be verified by affidavit.[3]

SEC. 3. Every person having such interest as is specified in this chapter, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, shall be made a party to such petition.[4]

SEC. 4. In cases where one or more of such parties shall be unknown, or the share or quantity of interest of any of the parties is unknown to the petitioner, or where such share or interest shall be uncertain, or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent, so that such parties cannot be named, the same shall be so stated in the petition.

SEC. 5. All persons interested in the premises of which partition is sought to be made according to the provisions hereof, whose names are unknown, may be made parties to such petition, by the name and description of unknown owners or proprietors of the premises, or as the unknown heirs of any person who may have been interested in the same.

SEC. 6. All persons having such interest, as is specified in this chapter, in any premises of which partition is sought to be made, or the guardians of such as are under age, who shall not have joined in the petition, (and if any person so interested be under age, and without guardian, the court shall appoint guardian *ad litem* for such minor,) shall have notice of such application by summons duly served, which summons shall issue against such persons by the name and description given in the petition; and when the names of persons having any such interest in such premises are unknown, and when parties whose names are known, do not reside in this territory, or cannot be found, they shall have further notice by advertisement, as provided by law; and after such advertisement, the court shall proceed to act in the premises, as though the parties had been duly served with summons, or had been notified by their proper names.

SEC. 7. During the pendency of any such suit, or proceedings, any person claiming to be interested in the premises to be assigned or parted, may appear and answer the petition, and assert his or her rights by way of interpleader; and the courts shall decide upon the rights of persons appearing as aforesaid, as though they had been made parties in the first instance.[5]

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(3) If the petition be not sworn to, it will be too late to object after an appearance and answer. *Dunning* v. *Dunning*, 37 Ill. 306.

(4) A mortgagee is a necessary party. *Loomis* v. *Riley*, 24 Ill. 310.

One who purchases or accepts a mortgage from one of the co-tenants, pending a petition for partition, is bound by the decree, whether he becomes a formal party or not. *Ibid.*

(5) A party in interest who is not made a party by the petition, may interplead at any time before

SEC. 8. The court shall ascertain from the evidence in case of default, or from the confession by plea of the parties, if they appear, or from the verdict by which any issue of fact shall be determined, and shall declare, the rights, titles, and interests of all the parties to such proceedings, petitioners as well as defendants, and give such judgment as may be required by the rights of the parties.[6]

SEC. 9. The court, when it shall order a partition of any premises to be made under the provisions hereof, shall appoint three commissioners, not connected with any of the parties, either by consanguinity or affinity, and entirely disinterested, each of whom shall take an oath before the court, or some justice of the peace, fairly and impartially to make partition of said lands, in accordance with the judgment of the court as to the rights and interests of the parties, if the same can be done consistently with the interests of the estate;[7] and the said commissioners shall go upon the premises,[8] and make partition of said lands, tenements and hereditaments, assigning to each party his or her share by metes and bounds; and make report, which shall be under their hands and seals,[9] to the court during the same or next succeeding term, at which they were appointed; and the court may, at the term when such report shall be made, make all such orders upon such reports, as may be necessary to a final disposition of the case.[10]

SEC. 10. The commissioners to be appointed under this chapter, shall be allowed, as a compensation for their services, two dollars and fifty cents per day each, to be taxed as other costs.

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final decree, even after the report of commissioners has been presented and filed; prior orders and proceedings may be amended or changed, so as to meet the exigencies of the case presented by the interpleader. *Kester* v. *Stark*, 19 Ill. 328.

(6) The decree must find and set forth the several rights and interests of all the owners. *Tibbs* v. *Allen*, 27 Ill. 128. *Greenup* v. *Sewall*, 18 Ill. 53.

If the decree exceed the prayer of the petition, it is error. *Forquer* v. *Forquer*, 21 Ill. 294.

(7) The commissioners must take the oath prescribed by the statute. *Tibbs* v. *Allen*, 27 Ill. 128.

The oath should accompany the report. *Lloyd* v. *Malone*, 23 Ill. 47.

(8) The report must show that the commissioners went upon the premises. *Tibbs* v. *Allen*, 27 Ill. 128.

(9) It was decided in *Bledsoe* v. *Wiley's Lessee* that the failure of the commissioners to attach seals to their report of partition will not vitiate the proceeding. 7 Humph. 507.

The partition cannot, in a collateral proceeding, be questioned for such an irregularity. *Lane* v. *Bommelman*, 17 Ill. 97.

(10) The partition when reported and approved by the court, binds all the parties, and has the effect to invest title without deeds of release or partition. *Street* v. *McConnell*, 16 Ill. 125. *Doolittle* v. *Don Mans*, 34 Ill. 457.

The court is not bound by the report of the commissioners, but may set it aside and make a new reference. *Riggs* v. *Dickenson*, 2 Scam. 437.

A report of the viewing and partition of other lands than those mentioned in the petition, will not support a decree of partition. *Cost* v. *Rose*, 17 Ill. 276.

A report from others than the commissioners appointed by the court, is void, and should not be received. *Lloyd* v. *Malone*, 23 Ill. 47.

It is not essential that the report should be approved at the term succeeding the sale; it may be presented at a term long subsequent; and after the cause has been stricken from the docket, it may be reinstated upon due notice to all parties, and the report of the sale approved. *Tibbs* v. *Allen*, 29 Ill. 548.

SEC. 11. When any lands, houses or lots are so circumstanced that a division thereof cannot be made without manifest prejudice to the proprietors of the same, and the commissioners appointed to divide the same, shall so report to the court,[11] the court shall thereupon give an order to said commissioners, or other person or persons, to sell such lands, houses or lots, or houses and lots, at public vendue, upon such terms, and by giving notice of sale as the court shall direct;[12] and who shall make and execute good and sufficient conveyance or conveyances to the purchaser or purchasers thereof, which shall operate as an effectual bar, both in law and equity, against such owners or proprietors, and all persons claiming under them; and the commissioners or persons making such sale, shall report their proceedings to the court,[13] and shall pay over the moneys arising therefrom to the parties entitled to receive the same, under the direction of the court; the court to make such order in relation to costs as shall seem right.

SEC. 12. When a sale of any lands or premises shall be made in accordance with the preceding section, and no person shall appear to claim such portions of the money as may belong to any non-resident, or person whose name is unknown, the court shall thereupon require the money belonging to the persons not claiming as aforesaid, to be deposited in the treasury of the territory, subject to the further order of the court; and all money required to be deposited as aforesaid, shall be received by the territorial treasurer, and paid out upon the order of the court.

SEC. 13. When money shall be deposited in the territorial treasury under the provisions of this chapter, the person or persons entitled to the same, may at any time apply to the court making the order of sale, and obtain an order for the same, upon making satisfactory proof to the court of his or her or their right thereto.

SEC. 14. No plea in abatement shall be received in any suit for partition, nor shall such suit abate by the death of any tenant.

SEC. 15. The courts of chancery of this territory shall have power, upon bills for the partition of lands, to proceed according to the usual practice of courts of chancery, or according to the provisions of the preceding sections; they shall also have power upon bill or petition for the partition of lands, to inves-

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(11) A report by commissioners that, "from all the circumstances surrounding the pecuniary condition of the family, and locality of the lands, they cannot be divided without prejudice to the interests of the owners," will not warrant a decree of sale. *Tibbs* v. *Allen*, 27 Ill. 128.

(12) If it appear that there is a dower interest, the dowress should, in case a sale is decreed, be protested; the sale should be made subject to the dower. *Francisco* v. *Hendricks*, 28 Ill. 64.

(13) The report of the sale must contain proofs outside of the mere assertion of the commissioners that the proper notice was given. *Ibid.*

tigate and determine all questions of conflicting or controverted titles, and to remove clouds upon the title, to any of the premises whereof partition is sought; to invest titles by their decrees, without the form of conveyances by infants and unknown heirs or persons; to order a sale of the premises where, for any reason, the same cannot conveniently be partitioned, and by its decree to invest the purchaser with title; and where partition is made of premises which are subject to any encumbrance to apportion such encumbrance among the persons to whom partition is made.

Prior Statutes Repealed. An act concerning partitions of real estate. Approved November 6, 1861. Laws 1861, p. 113.

CHAPTER LXVIII.

PAUPERS.

SECTION
1. Paupers, by whom to be supported; pauper, from intemperance or other bad conduct, not entitled to support from any relative except parent or child.
2. In what order relations liable; married women not liable to an action during their coverture.
3. Pauper having no relative, or none of sufficient ability, shall receive relief from county treasury.
4. When a non-resident poor person, not a pauper, shall fall sick in any county, county commissioners to provide assistance; if such person die, to order a decent burial.
5. Upon what county pauper chargeable.
6. Person becoming a pauper in another county than that of his residence, to be cared for by such county; notice to be given to the commissioners of the county liable for his support, to remove him.
7. In case he cannot be removed, an action lies by county supporting him against the county of his residence.
8. Residence defined.
9. Penalty for bringing and leaving pauper in county where not lawfully settled.
10. County commissioners may establish a poor-house; may purchase or lease a building.
11. County commissioners to acquire, in the name of county, land for poor-house.
12. May levy a tax to purchase land, erect and furnish poor-house.
13. May employ workmen to establish and put in operation such poor house; may appoint a physician.
14. Title to poor-house and farm, to be made to the county.

SECTION 1. Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, child, grandchild, brother or sister of such poor person, if they, or either of them, be of sufficient ability. And every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child or grandchild, sister or brother when directed by the county commissioners of the county where such poor person shall be found, whether such relative reside in the same county or not, shall forfeit and pay to the said county commissioners, for the use of the poor of their county, the sum of twenty dollars for each and every month for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners, for the use of the poor aforesaid, in an action of *assumpsit*, before any justice of the peace or other court having jurisdiction: *Provided*, That when any persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relation except parent or child.

SEC. 2. The children shall be first called on to support their parents, if they be of sufficient ability, and if there be none of sufficient ability, the parents of such poor person shall be next called on, and if there be no parents or children, the brothers and sisters of such poor person shall next be called on, and if there be no brothers or sisters, the grandchildren of such poor person shall next be called upon, and then the grandparents: *Provided*, Married females, whilst their husbands live, shall not be liable to a suit.

SEC. 3. When any such poor person shall not have any such relation in any county in this territory, as are named in the preceding sections, or such relation is not of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief, as his or her case may require, out of the county treasury in the manner hereinafter provided.

SEC. 4. When any non-resident or any other person, not coming within the definition of a pauper, shall fall sick in any county of this territory, not having money or property to pay his or her board, nursing, and medical attendance, it shall be the duty of the county commissioners, upon complaint being made to them or either of them, to give an order that such assistance be given to such poor person as they may deem just and necessary, and if said sick person shall die, then the said county commissioners, or commissioner, shall order to be given to such person a decent burial, and the county commissioners may make such allowance for board, nursing and medical aid, or burial expenses, to the person or persons entitled thereto, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

SEC. 5. Any person becoming chargeable as a pauper in this territory, shall be chargeable as such pauper in the county in which he or she resided at the commencement of the sixty days immediately preceding such persons becoming so chargeable.

SEC. 6. If any person shall become chargeable in any county in which he or she did not reside at the commencement of the sixty days immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the county commissioners where he or she may be found, and it shall be the duty of the clerk of the county commissioners to send notice by mail to the clerk of the county commissioners of the county in which such pauper resided as before stated; that said person has become chargeable as a pauper, and requesting the authorities of said last-named county to remove said pauper forthwith, and to pay the expense accrued in taking care of him, her or them.

SEC. 7. If any such pauper, by reason of sickness or disease, or by neglect of the county commissioners to which said county he or she belongs, or for any other sufficient cause, cannot be removed, then the county taking charge of such pauper may sue for and recover from the county to which he or she belongs, in any proper action, before any court having competent jurisdiction, the amount expended for and on behalf of such pauper or paupers, and in taking care of the same.

SEC. 8. The term "residence" as used in this chapter shall be taken and considered to mean the actual residence of the party, or the place where he or she was employed, or in case he or she was in no employment, then it shall be considered and held to be the place where he or she made it his or her home.

SEC. 9. If any person shall bring and leave any pauper or paupers in any county in this territory wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of two hundred dollars for every such offence, to be sued for and recovered, by and to the use of such county, by action of debt, before any court having competent jurisdiction; and the suit may be brought in the county where the pauper was brought and left, and the process may be directed to, and served by, any proper officer in any county in this territory.

SEC. 10. The county commissioners in each county in this territory are hereby authorized, whenever they may deem it proper so to do, to establish a poor-house, and for that purpose to purchase or lease a building upon such terms as they may deem best.

SEC. 11. The county commissioners are hereby authorized to acquire, in the name of the county, by grant, devise, or purchase, any tract of land, not exceeding six hundred and forty acres, for the purposes of such poor-house.

SEC. 12. Said county commissioners are hereby authorized and empowered to receive donations to aid in the establishment of such poor-house, and are also empowered, from time to time, if they shall see fit, to levy and collect a tax, not exceeding five mills on the dollar, on the taxable property of the county, and to appropriate the same to the purchase of land not exceeding the aforesaid six hundred and forty acres, and to erect and furnish buildings suitable for a poor-house, and to put into operation and to defray the annual expenses of said poor-house, should the labor of the inmates be inadequate thereto.

SEC. 13. Said county commissioners are hereby authorized and empowered to employ such workmen, agents, and other persons as may be necessary to establish and put into operation such poor-house, and to provide and appoint a physician to attend upon those who may fall sick.

SEC. 14. The title to all property authorized to be acquired by this chapter for the purpose of said poor-house shall be made to the county.

Prior Statutes Repealed. An act providing for the support of paupers. Approved February 10, 1865. Laws 1865, p. 93.

An act to amend an act entitled An act providing for the support of paupers. Approved January 11, 1867. Laws 1867, p. 83.

CHAPTER LXIX.

POWDER-HOUSES.

SECTION

1. Company desiring to build powder-house, to have exclusive right to one acre of ground, not occupied by any prior encumbrancer.
2. Survey of such ground to be made and recorded; record to be evidence of the rights of claimant.
3. Powder-houses within the limits of any city or town, to be subject to ordinances thereof.
4. Grounds claimed under this chapter to be in square form; powder-house to be erected not more than sixty feet from centre.
5. This chapter to apply only to the public lands; claims for the purposes hereof shall exist only for these purposes; all rights of claimant to cease when building not used for the purposes of storing explosive material.
6. No person to hold more than one tract under this chapter.

SECTION 1. Whenever any person or company desires to erect and build a powder-house or magazine, for the purpose of storing therein gunpowder, blasting-powder, fuse, and the like explosive and combustible materials, such person or company shall have the exclusive right and control, except as against the United States, of and to one acre of any land, for that purpose, not occupied by any prior encumbrancer, claiming a right thereto, and such person or company may build any such powder-house or magazine thereon, and no other person or company shall have the right to occupy any portion of the said one acre of land for any purpose whatever, except by consent of the person or company erecting and building such powder-house or magazine.

SEC. 2. Any person or company claiming a tract of land not exceeding one acre, for the purpose expressed in the foregoing section, shall employ the county surveyor of the county wherein such tract of land is situated to make a survey of the same and a plat thereof, which said plat, when filed for record in the office of the county recorder of the proper county, shall be taken as evidence of the right of the person or company thereto, for whose benefit the said survey is made.

SEC. 3. Powder-houses within the corporate limits of any city or town shall be subject to such ordinances as are now passed or may be passed regulating the same.

SEC. 4. All tracts of land claimed under the provisions of this chapter, shall be in the form of a square, and any powder-house erected thereon shall not be located more than sixty feet from the centre thereof.

SEC. 5. The provisions of this chapter shall apply only to public lands, belonging to the United States; and claims made for the purpose of establishing powder-houses and magazines as aforesaid, shall exist only for the purposes aforesaid, and shall be used only for such purposes; and all right and interest of the claimants therein shall cease and determine, whenever the building or buildings thereon, shall not be used for storing explosive material.

SEC. 6. No corporation, company, firm, association, or individual shall hold more than one tract of land, under the provisions of this chapter, in any one mining district; nor shall any person or persons holding any tract of land, to be used by any corporation, company, association, firm or individual, hold another tract of land in their own right, under the provisions of this chapter.

Prior Statutes Repealed. An act in relation to powder-houses and magazines. Approved February 10, 1865. Laws 1865, p. 96.

CHAPTER LXX.

PRACTICE.

SECTION

1. Process, in whose name to issue; seal; teste; to whom directed; the first process to be a summons; tenor thereof; when returnable.
2. Defendant to be sued only in county of residence, or where cause of action accrued or is payable; several defendants may be sued in the county of any one of them; *proviso*.
3. Service, when to be made; indorsement; may be returned by mail, in what cases.
4. Process against corporations, how served.
5. Process not served ten days before term, cause to be continued.
6. *Alias* summons to issue when defendant not found; where a part only of defendants served, judgment may be had against them; how defendants not served made parties to judgment.
7. Proceedings to compel a return of process.
8. Plaintiff to file declaration and copy of instrument of writing or account, sued on, ten days before term; otherwise cause continued; costs; if declaration etc. not filed ten days before second term, cause to be dismissed.
9. Clerk of court to keep docket.
10. To issue subpœnas for witnesses.
11. Cause may be tried by court, by *agreement*,
12. Court may compel parties to produce books. writings, etc.; defendant required to file an account with his plea, when.
13. Defendant appearing may have time allowed him to plead; default allowed in what cases; causes to be disposed of in their order; application for continuance, how made.
14. Defendant may plead several pleas or the general issue, with notice; court may allow several replications or rejoinders; no person to deny on trial, any instrument of writing, sued on, or set-off, except under affidavit. *Proviso*, as to denial by executor, or administrator.
15. In what cases clerk may assess damages.

SECTION

16. Defaults may be set aside at the term at which entered, for cause shown.
17. Affidavits read in court, during any trial, to be filed by clerk.
18. In actions on penal bonds, damages how assigned, assessed and collected: judgment for penalty, as security for further breaches; defendant to have notice of such assessment of damages, subsequent to the first trial or inquiry.
19. Set-off; defendant may have judgment for balance due him; costs; execution.
20. In civil causes, each party to have peremptory challenge of five jurors; jury retiring to consider verdict may take all papers used as evidence on the trial.
21. Exceptions, when to be made; how preserved and attested.
22. Exceptions may be taken on trials before the court without jury; rulings of court in such case may be assigned for error.
23. Exceptions may be taken to overruling motion for continuance, in arrest of judgment, or for a new trial.
24. Verdict of jury may be pronounced by their foreman in open court; clerk to enter same in form; if party desires to move for a new trial, or in arrest, shall give notice in open court to opposite party; and furnish points and ground of motion if demanded, to opposite party and to the court; no more than two trials granted to same party; verdict or judgment not set aside for irregularity, unless at same term.
25. If one of several counts good, entire verdict not to be set aside; defendant may pray the court to instruct the jury to disregard faulty counts.
26. In cases of attachment, declaration, etc., to be filed at return term, otherwise defendant to have judgment for costs.
27. Judgment may be entered by confession; effect of as a release of errors; may be entered in vacation; effect of, as a lien.
28. Court to instruct only as to the law of the case; instructions to be in writing, unless both parties agree to oral instructions.
29. Plaintiff desiring to suffer a non-suit, shall do so before jury retire.
30. Interpreters may be sworn when necessary.
31. Where judgment arrested for any defect after first process, court may order new proceedings to commence with the error.
32. After tender made, plaintiff not to recover costs; party pleading tender to bring money into court.
33. No declaration necessary on *scire facias* to revive a judgment, or foreclose a mortgage.
34. Clerk of district court to keep fee-book; all costs accruing to be entered therein; costs of party prevailing, to be included in the judgment; bill of costs to issue with the judgment; costs of party defeated to be collected by fee-bill.
35. Fee-bill or bill of costs issued with execution before entry thereof in fee-book, or fee-bill or bill of costs not a copy from record, void.
36. Costs of prevailing party need not be entered in judgment, unless a complete record is required.
37. Clerk to keep judgment docket; penalty for failure to keep docket, or to enter therein any judgment, etc.
38. Proceedings against officer failing to pay over money collected on execution, or to return execution.
39. Clerk to record sheriff's returns.
40. Party may, in vacation, move to quash an execution, writ of replevin, or attachment, or bond, or other proceedings; on reasonable notice to opposite party, may apply to judge at chambers to hear same; judge may require new or additional security, or stay all proceedings.
41. Appeals from district to supreme court, allowed in what cases; to be prayed for in three days; appellant to give bonds with surety; by whom approved; condition; supreme court may allow defective bond to to be amended.

SECTION

42. Transcript of record to be filed in supreme court by third day of term succeeding appeal; *proviso*, if less than thirty days intervene between making the appeal and next term of supreme court, such transcript shall be filed by third day of next term; otherwise appeal dismissed; court may allow further time for cause shown.
43. On appeal or writ of error, supreme court may give final judgment, or remand cause.
44. On dismissal of appeal or writ of error, or affirmance of judgment, clerk of district court to issue execution.
45. One of several parties against whom judgment is rendered may appeal, or prosecute a writ of error; costs in such case.
46. Supreme court in case of partial reversal, may give judgment, or remand cause.
47. No writ of error to be brought after five years; persons under disability excepted.
48. No writ of error to operate as a *supersedeas* except upon the order of the supreme court, or some justice thereof; security in such case.
49. On equal division of supreme court, judgment below affirmed.
50. A scrawl to have the effect of a seal.
51. Damages for appeal taken for delay.
52. Damages assessed in like case, on appeal from judgment of a justice of the peace.
53. In action by assignee of negotiable writings, plaintiff not bound to prove assignment unless put in issue by plea verified by affidavit.
54. If affidavit filed in any civil action, that defendant is a non-resident or hath gone out of territory, or conceals himself, clerk to publish notice of pending suit.
55. Plaintiff, in addition to such notice, to leave notice at residence of defendant; and if whereabouts of defendant can be ascertained, to mail such notice to defendant.
56. If first publication of notice, as provided by section fifty-four, be not sixty days before term, or if such other notice has not been given as provided in section fifty-five, cause to be continued at cost of plaintiff.
57. Plaintiff if no defence made, upon proof of the giving of notice as provided in sections fifty-four and fifty-five, shall have judgment as upon personal service of process.
58. Judgment entered under the foregoing sections, against a party not personally served with process and not appearing may be set aside upon cause shown at any time within one year, and defendant admitted to plead; terms.
59. If execution not sued out within one year, such judgment void, as against persons not actually served; plaintiff may bring a new action.
60. Sections fifty-four to fifty-nine to apply where foreign corporations are defendants, except where service may be had, under section four; not to apply to suits commenced by attachment.
61. Defendant, in certain cases, may have a rule on plaintiff to file a declaration.
62. Process upon writ of error.
63. How process on writ of error served upon non-resident defendant, or persons not found.
64. Citizens absent in military service, not liable to the provisions of sections fifty-four to sixty-three.
65. Plaintiff may dismiss his action in vacation.
66. Writ of error in prosecution by indictment; *supersedeas*, how obtained; prisoner not discharged thereby; may give bail in bailable cases; supreme court affirming judgment in such case, may cause sentence of district court to be executed; in capital cases to fix the time; a copy of such order to be sufficient authority for the execution of sentence.
67. No punishment to be inflicted in any case brought before the supreme court, under this chapter unless a majority of court concur in respect thereto.

SECTION 1. All process, writs, and other proceedings shall run in the name of "The people of the territory of Colorado," shall be issued under the seal of the court, tested in the name of the clerk of such court, dated on the day it shall be issued and signed with his name;[1] and shall be directed to the sheriff, (or if he be interested in the suit, to the coroner,) of the proper county. The first process in all actions to be hereafter commenced in any of the district courts of this territory, shall be a summons,[2] which summons shall specify the nature of the action, and the amount claimed, and shall be made returnable on the first day of the next term of the district court in which the action may be commenced.[3]

SEC. 2. It shall not be lawful for any plaintiff to sue a defendant out of the county where the latter resides, or may be found except in cases where the debt, contract, or cause of action, accrued in the county of the plaintiff, or where the contract may have been made specifically payable, when it shall be lawful to sue in such county, and process may issue against the defendant to the sheriff of the county where such defendant resides; and in every species of personal action, whether in law or in equity, when there is more than one defendant, the plaintiff, commencing his action where either of such defendants reside, may have a writ or writs issued, directed to any county or counties where the other defendants, or either of them, may be found: *Provided*, That if a verdict shall not be found, or judgment rendered against the defendant or defendants residing in the county where the action is commenced, judgment shall not be rendered against those defendants who do not reside in such county, unless they enter an appearance in the cause.[4]

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(1) It will be sufficient if the clerk sign with only the initials of his christian name. *Bishop Hill Colony* v. *Edgerton*, 26 Ill. 54.

(2) The issuing of summons is the commencement of the suit. *Feazle* v. *Simpson*, 1 Scam. 32. *Burnap* v. *Wright*, 14 Ill. 303.

(3) A summons issued in March, and returnable "on the third Monday of March next," (the term sitting on the third Monday of March, instant,) is a nullity. *Elee* v. *Wait*, 28 Ill. 72.

And see *Calhoun* v. *Webster*, 2 Scam. 221. *Hildreth* v. *Hough*, 20 Ill. 331.

(4) This section is held not to apply to counties and municipal corporations. *Schuyler Co.* v. *Mercer Co.*, 4 Gilm. 24.

It is unnecessary, where process is sent to a foreign county, to aver in the declaration the special facts which give the court jurisdiction to issue such process; the jurisdiction of the court is presumed, until controverted by plea. *Kenney* v. *Greer*, 13 Ill. 432. *Haddock* v. *Waterman*, 11 Ill. 474. *Hamilton* v. *Dewey*, 22 Ill. 492.

When the facts which authorize process to issue to a foreign county do not exist, the defendant may either plead to the jurisdiction, or in abatement to the suit. *Tiffany* v. *Spaulding*, 22 Ill. 493.

A., residing in Tazewell county, agreed with B., a resident of New York, to deliver to the latter at Chicago, in the county of Cook, a quantity of corn, for which B. promised to pay upon delivery: *Held*, That, upon breach of this contract, B. could not bring his action in Cook county, and send process to Tazewell. *Porter* v. *Boardman*, 17 Ill. 595.

The word "accrued" here, so far as applied to the preceding word "contract," means "was made or executed." *Phelps* v. *McGee*, 18 Ill. 155.

A promissory note was made and assigned in the county of M.; the assignee, who resided in the county of A., brought his action thereon, in A. county, and summons was issued to M. and service

SEC. 3. It shall be the duty of the sheriff, or the coroner, to serve all process of summons, when it shall be practicable, ten days before the return-day thereof, and to make return of such process to the clerk who issued the same, by or on the return-day, with an indorsement of his services;[5] the time of serving it, and the amount of his fees: *Provided*, That when such process shall have been directed to a foreign county, the officer executing the same may make return thereof by mail, or express, and the clerk may charge the postage or express fees, and tax the amount in his fee-bill.

SEC. 4. In all suits against any incorporated company, summons shall be served on the president thereof, if he resides in the county, but if he do not reside in the county, or be absent from the county, or cannot be found, then the summons shall be served by leaving a copy thereof with any clerk, secretary, cashier, or agent of said company, within such time, and under such regulations as are herein provided for the service of such process in suits against natural persons: *Provided*, That if there shall be no such president, clerk, secretary, cashier or agent of said company to be found in said county, the summons aforesaid, shall be served on some stockholder of said company, and such service shall, in such cases, be deemed as effectual and valid, as if made on any of the officers of said company.[6]

SEC. 5. If it shall not be in the power of such sheriff or coroner to serve a summons ten days before the return-day thereof, he may execute the same at any time before or on the return-day; but in such cases, the defendant or defendants shall be entitled to a continuance, and shall not be compelled to plead before the next succeeding term.

SEC. 6. Whenever it shall appear, by the return of the sheriff or coroner, that the defendant or defendants are not found, the clerk shall, at the request of the plaintiff, issue another

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was had thereon. On plea to the jurisdiction: *Held*, That the court had no jurisdiction by service of process in M, county. *Aird* v. *Haynie*, 36 Ill. 176.

Any transitory action may be brought against a corporation in any county where an officer or agent of the company is found, without reference to where the action accrued, or whether such county be the residence, or principal place of business of the corporation, or not. *Peoria Ins. Co.* v. *Warner*, 28 Ill. 432.

(5) It is unnecessary for the sheriff to append his official designation to his signature to the return of process. *Thompson* v. *Haskill*, 21 Ill. 216.

The return must show actual service of the process; a return that the defendant accepted service, is insufficient. *Maher* v. *Bull*, 26 Ill. 348.

It is unnecessary that the sheriff should affix a date to his return of service; and if a date appear in such return it will be taken to be the date of service and not of the return. *Caricker* v. *Anderson*, 27 Ill. 364.

"I have executed the within by reading to the within-named, A. C., December 24, 1858," was held to be a sufficient return. *Ibid.*

(6) A return of service upon an officer of a corporation, in an action against the corporation, must show his official character affirmatively. A return of service upon one "as President, etc.," will not suffice. *Ill. & Miss. Telegraph Co.* v. *Kennedy*, 24 Ill. 319.

If the fact of the agency of the person upon whom service is made, be denied, the return of the sheriff will not be regarded as conclusive. *Mineral Point Railroad Co.* v. *Keep*, 22 Ill. 9.

summons, and so on until service be had, and the defendant or defendants be summoned or brought into court; and if such summons be served on any one or more, but not all, of the defendants, the plaintiff or plaintiffs shall be at liberty to proceed to trial and judgment in the same manner as if all the defendants were in court; and any judgment so obtained shall be valid against the defendant or defendants on whom the process had been served, and the plaintiff or plaintiffs may, at any time afterwards,[7] have a summons in the nature of a *scire facias*, against the defendant or defendants not served with the process, as aforesaid, to cause him, her or them to appear in the said court and show cause why he, she, or they should not be made a party to such judgment; and the court shall thereupon proceed to hear and determine the matter in the same manner as if such defendant or defendants had been originally summoned or brought into court; and such defendant or defendants shall also be allowed the benefit of any payment which may have been made on the judgment before recovered; and the judgment of the court against the defendants in such case, shall be that the plaintiff or plaintiffs recover against such defendant or defendants, together with the defendant or defendants in the former judgment, the amount of his debt or damages, as the case may be.

SEC. 7. If any sheriff or coroner, to whom any summons shall be delivered, shall neglect or refuse to make return of the same, before, or on the return-day of such process, the plaintiff may enter a rule, requiring said sheriff or coroner to make return of such process on a day to be fixed by the court, or to show cause, on that day, why he should not be attached for a contempt of the court; and the plaintiff shall thereupon cause a written notice of such rule to be served on such sheriff or coroner, and if good and sufficient cause be not shown to excuse such officer, the court shall adjudge him guilty of contempt, and shall proceed to punish such officer, as in other cases of contempt.

SEC. 8. If the plaintiff shall not file his declaration, together with a copy of the instrument of writing or account on which the action is brought, in case the same be brought on a written instrument or account, ten days before the first day of the term of court at which the summons is made returnable, the court, on motion of the defendant, shall continue the cause, at the cost of the plaintiffs,[8] unless it shall appear that the suit was

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(7) The *scire facias* may issue in vacation, without a previous order for the purpose. *Tiffany* v. *Breese*, 3 Scam. 500.

(8) In an action upon an indorsed note, a copy of the indorsements need not be given. *Franey* v. *True, et al.* 26 Ill. 186.
And see *Love* v. *Fairchild*, 5 Gilm. 304.

commenced within ten days of the sitting of the court, in which case, the cause shall be continued without costs, unless the parties shall agree to have a trial; and if no declaration be filed, within ten days before the second term of the court, the defendant shall be entitled to judgment, as in case of non-suit.[9]

SEC. 9. The clerks of the district courts shall keep a docket of all the causes pending in their respective courts, in which shall be entered the names of the parties, the cause of action, and the name of the plaintiff's attorney; and they shall furnish the judge and bar, at each term, with a copy of the same, in which all indictments and causes to which the people are a party, shall be first set down, after which shall be set down all cases in law, in order according to the time of their commencement, and lastly, the suits in chancery.

SEC. 10. The clerk shall, from time to time, issue subpœnas for such witnesses as may be required by either party, returnable on the day for which the cause in which they are required to attend is set for trial; and every clerk who shall refuse so

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Where the instrument of writing is set out in *hæc verba*, in the declaration, it is unnecessary to file an additional copy. *Benjamin* v. *Delahay*, 2 Scam. 574.

The statute requires a copy of the account to be filed, only where the action is upon an account. *The People* v. *Pearson*, 1 Scam. 458.

When the declaration contains a special count upon a promissory note, and the common counts, the plaintiff may avoid the effect of a motion for a continuance, for want of a bill of particulars under the common counts, by a stipulation that the promissory note is the only cause of action sought to be recovered upon. *The People* v. *Pearson*, 1 Scam. 458. *Hathorn* v. *Cooper*, 22 Ill. 225.

If the defendant go to trial without objection to the copy filed with the declaration, he cannot assign for error, a variance between the copy and the declaration. *Chumasero* v. *Gilbert*, 26 Ill. 40.

If the copy filed does not correspond with the declaration, the defendant may apply for a continuance, but he cannot, for the variance, object to the introduction of the original on trial. *Stratton* v. *Henderson*, 26 Ill. 74. *Moline Water-Power Co.* v. *Nichols*, 26 Ill. 93.

It is discretionary with the court to allow an amendment of the copy on trial. *Stratton* v. *Henderson*, 26 Ill. 74. 22 Ill. 257.

The plaintiff cannot recover a larger amount than is claimed in his bill of particulars. *Morton* v. *McClure*, 22 Ill. 257.

(9) Actions commenced by attachment are within this section. *Craft* v. *Turney*, 25 Ill. 324. *Collins* v. *Tuttle*, 24 Ill. 623.

Where the declaration is filed in apt time, an omission to file the account or copy of the writing sued upon, by the second term, will not authorize the court to dismiss the cause, until a rule has been entered requiring such copy to be filed, and the plaintiff has failed to comply with such rule. *Kimball* v. *Kent*, 2 Scam. 217.

The right of the defendant to have judgment as in case of non-suit, for a failure of the plaintiff to file his declaration ten days before the second term, is one that may be waived, and it seems that if the defendant afterwards submits to a rule to plead, he will be deemed to have waived it. *Pratt* v. *Grimes*, 35 Ill. 164.

But the plaintiff cannot, after such default on his part, upon subsequently filing his declaration, take judgment against the defendant without the entry of such rule to plead. *Ibid.*

The right of the defendant to a judgment of non-suit, is not, in such case, affected by the omission of the judge to hold the term of court succeeding the institution of the suit. *Downey* v. *Smith*, 13 Ill. 673.

If the declaration be filed ten days before the second term after the issuing of the summons upon which the defendant is served, whether that be an *alias* or *pluries* writ, it will be sufficient. *Herring* v. *Quinby*, 31 Ill. 153.

The entry of an appearance by the defendant, does not, where the declaration was not filed ten days before the term, authorize a default. *Hoes* v. *Van Alstyne*, 16 Ill. 384.

But the defendant, though not served, may, upon entering his appearance, have a rule on the plaintiff to file his declaration at the first term. *Herring* v. *Quinby*, 31 Ill. 153.

to do, shall be fined, at the discretion of the court, in any sum not exceeding one hundred dollars.

SEC. 11. In all cases pending in any district court in this territory, if both the parties shall agree, both matters of law and fact may be tried by the court.[10]

SEC. 12. The several district courts shall have power, in any action pending before them, upon motion, and good and sufficient cause shown, and reasonable notice thereof given, to require parties, or either of them, to produce books and writings in their possession or power, which contain evidence pertinent to the issue; and it shall be the duty of the defendant or defendants where he, she or they intend to prove, on the trial, any accounts or demands against the plaintiff or plaintiffs, to file, with his plea, a bill of the particular items of such accounts or demands; and no other accounts or demands shall be suffered to be proved to the jury.

SEC. 13. On the appearance of the defendant or defendants, the court may allow such time to plead as may be deemed reasonable and necessary; and for want of appearance, may give judgment by default, on calling the cause, except in cases where the process has not been served, or declaration filed ten days before the term of the court; but all the causes shall be tried, or otherwise disposed of, in the order in which they are placed on the docket, unless the court, for good and sufficient cause, shall otherwise direct; and whenever either party shall apply for the continuance of a cause on account of the absence of testimony, the motion shall be grounded on the affidavit of the party applying, or his, her, or their authorized agent, showing that due diligence has been used to obtain such testimony, or the want of time to obtain it, and also the name and residence of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses; and should the court be satisfied that such evidence would not be material on the trial of the cause, or if the opposite party will admit that the absent witness or witnesses, if present, would swear to the fact or facts stated in the affidavit, the cause shall not be continued.[11]

SEC. 14. The defendant may plead as many matters of fact,

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(10) It is error for the court to proceed to determine issues of fact unless the record show that the parties waived trial by jury. *Ware* v. *Hottinger*, 35 Ill. 376.

(11) The party desiring a continuance on account of the absence of testimony, must present his motion for that purpose; an affidavit of inability to proceed to trial, is not a motion. *Morrell* v. *The People*, 32 Ill. 499. *Burlinghame* v. *Turner*, 1 Scam. 589.

In a prosecution for a misdemeanor, the defendant, in case of the absence of a material witness, may, upon proof of diligence, have a continuance from term to term, until the opposite party will join him in a commission to take the testimony of such absent witness. *Richardson* v. *The People*, 31 Ill. 170.

The affidavit must show affirmatively that the application is not made for delay; that the witness is not absent by permission of the party applying for the continuance; and that he expects to pro-in several pleas, as he may deem necessary for his defence; or may plead the general issue, and give notice in writing under the same, of the special matters intended to be relied on for a defence on the trial,[12] under which notice, if adjudged by the court to be sufficiently clear and explicit, the defendant shall be permitted to give evidence of the facts therein stated, as if the same had been specially pleaded, and issue taken thereon;

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cure the testimony of the witness at the next term of the court. *Shook* v. *Thomas*, 21 Ill. 89. *Richardson* v. *The People*, 31 Ill. 170.

That there is no other witness by whom the facts can be proved. *Ibid.* *Eames* v. *Hennessy*, 22 Ill. 628.

Or that it is a disputed point and numerous witnesses are to be examined; or that it is a question of identity and numerous witnesses are to be examined. *Ibid.*

To rely upon service of a subpœna issued at the instance of the opposite party, and the promise of the witness to attend, is not diligence. *Moore* v. *Goelitz*, 27 Ill. 18.

If a party relies upon the promise of a witness to attend at the trial, he cannot obtain a continuance if the witness does not attend. *Day* v. *Gelston*, 22 Ill. 102.

Where the affidavit showed that the witness was absent in another county in attendance upon his son, who was lying at the point of death, this was held to be a sufficient excuse for a failure to subpœna him, and a good ground for an application for continuance. *Allen* v. *Downing*, 2 Scam. 454.

Where the declaration was filed only twelve days before the term, and the affidavit showed that the defendant's witnesses were then and still out of the state, it was held to be error to refuse a continuance. *Lee* v. *Bates*, 1 Scam. 528.

Where the affidavit showed that the witness formerly resided in D. Co., that the subpœna had been issued to the coroner thereof, and that he had made search for the witness, who had, without the knowledge of the party, removed out of that county, it was held to be in this respect sufficient. *Adams* v. *Colton*, 2 Scam. 71.

What will constitute diligence depends upon the circumstances of each particular case. 21 Ill. 89. 35 Ill. 240.

Greater diligence will be required, on a second application, or after a great length of time from the service of process, than upon a first application, or shortly after service of process. 22 Ill. 628.

The mere service of the subpœna where the witness is within the reach of an attachment, is not, at the second term, diligence. 21 Ill. 89.

If the party desiring the attendance of a witness, is unacquainted with his residence, he should not content himself with merely writing to ascertain. "In these days of rapid communication and cheap travelling, something more than letters and inquiries will be required." *Stevenson* v. *Sherwood*, 22 Ill. 240.

And as to what is due diligence, see, further, *Lyon* v. *Boilvin*, 2 Gilm. 629. *Dunlap* v. *Davis*, 5 Gilm. 84. *I. M. F. Ins. Co.* v. *M. Manf. Co.*, 1 Gilm. 260. *Vickers* v. *Hill*, 1 Scam. 309.

The affidavit must state the facts expected to be proved, with certainty, in order that the other party, if he see fit, may admit them. *McBain* v. *Erloe*, 13 Ill. 76.

In general, it would be highly improper to allow an amendment of an affidavit which has been adjudged insufficient. *Ibid.*

An application which does not assume to bring the case within the statute, is addressed to the discretion of the court. *Ault* v. *Rawson*, 14 Ill. 484.

(12) The defendant cannot both plead specially, and give notice of special matter under the general issue. *Gilmore* v. *Newland*, 26 Ill. 204.

Where several rejoinders are filed, without leave to rejoin double, all but the first, are as if never filed, and not properly before the court. *Ryan* v. *Vallandingham*, 25 Ill. 132.

But if the court entertain a demurrer to such rejoinder, it will be considered as equivalent to special leave in the first instance. *Ibid.*

A notice of special matter, under the general issue, stands in lieu of a special plea, fills the same office, and is governed by the same rules. *Sherman* v. *Dutch*, 16 Ill. 283. *Miller* v. *Miller*, 16 Ill. 296.

The account attached thereto is part of the record. 16 Ill. 296.

But no issue can be formed on the notice, either of law or fact, and no question arises thereon, until the defendant offers evidence, in support of it upon trial, when if the matter stated in the notice is found to be insufficient, or the evidence offered varies therefrom, the evidence will be excluded. *Burgwin* v. *Babcock*, 11 Ill. 30. 20 J. R. 144, 746; 13 J. R. 475; 8 Wend. 570; 24 Wend. 354; 1 Denio, 246.

If, however, the notice be uncertain, indefinite, and inconsistent, it may be stricken from the files. *Henrichsen et al.* v. *Mudd et al.*, 33 Ill. 480.

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the same may have been entered, upon affidavit, and upon such terms and conditions as shall be deemed reasonable.

SEC. 17. All affidavits read in court, during the progress of any cause, and relating thereto, shall be filed and preserved by the clerk.

SEC. 18. In actions brought on penal bonds, conditioned for the performance of covenants, the plaintiff may assign in his declaration as many breaches as he may think fit,[16] and the jury, whether on trial of the issue, or of inquiry, shall assess the damages for so many breaches as the plaintiff shall prove, and the judgment for the penalty shall stand as security for such other breaches as may afterwards happen; and the plaintiff may, at any time afterwards, sue out a writ of inquiry to assess damages for the breach of any covenant or covenants, contained in such bond subsequent to the former trial or inquiry; and whenever execution shall be issued upon such judgment, the clerk shall indorse thereon the amount of the damages assessed by the jury, with the costs of suit, and the sheriff or coroner shall only collect the amount so indorsed: *Provided*, That in all cases where a writ of inquiry of damages shall be issued, for any such breaches subsequent to the first trial or inquiry, the defendant, or his agent or attorney, shall have at least ten days' notice, in writing, of the time of executing the same.

SEC. 19. The defendant or defendants, in any action brought upon any contract or agreement, either express or implied, having claims or demands against the plaintiff or plaintiffs in such action, may plead the same, or give notice thereof under the general issue, as is provided in the fourteenth section of this chapter, or under the plea of payment; and the same, or such part thereof as the defendant or defendants shall prove on trial, shall be set-off and allowed against the plaintiff's demand, and a verdict shall be given for the balance due; and if it shall appear that the plaintiff is indebted to the defendant, the jury shall find a verdict for the defendant or defendants, and certify to the court the amount so found; and the court shall give judgment, in favor of such defendant or defendants, for the amount so certified, with the costs of his defence, and execution shall be issued on such judgment, as in other cases.[17]

SEC. 20. In all civil actions, each party shall be entitled to a challenge of five jurors, without showing cause for such challenge; and when the jury retire to consider their verdict, they

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(16) See *Hibbard* v. *McKendley*, 28 Ill. 254.

(17) Only mutual demands can be set-off; the demand sought to be set-off must be due, and must be so alleged in the plea. *Lemon* v. *Stevenson*, 36 Ill. 49.

Set-off can be made of only those causes of action which existed at the time of the bringing of the plaintiff's action. *Irvin* v. *Wright*, 1 Scam. 136.

And only of demands arising *ex contractu*. *Edwards* v. *Todd*, 1 Scam. 462.

In an action to recover freight-money for the transportation of merchandise, the defendant may shall be permitted to take any papers that may have been used as evidence on the trial.[18]

SEC. 21. In all cases in the district court where either party shall except to any ruling, decision or opinion of the court, and shall reduce such exception or exceptions to writing, it shall be the duty of the judge to allow the same, and to sign and seal the same at any time during the term of the court at which such exceptions were taken, or at any time thereafter to be fixed by the court; and at any time when any judge shall neglect or refuse to allow and sign and seal such bill of exceptions, then it shall be lawful for the suitor, or his attorney, to make and attach to such bill of exceptions, the affidavit of two or more attorneys of the court, or other persons, who were present at the time of the trial, and when such exceptions were taken, stating that such bill of exceptions is correct and true; and when such bill of exceptions is so allowed and signed and sealed by the judge, or so attested and proved by affidavit, it shall thereupon be filed by the clerk, and shall become a part of the record of such cause.

SEC. 22. Exceptions taken to opinions and decisions of the district courts, upon the trial of causes in which the parties agree that both matters of law and fact may be tried by the court, and in appeal cases tried by the court without the intervention of a jury, shall be deemed and held to have been properly taken and allowed; and the party excepting, may assign for error, before the supreme court, any decision or opinion so excepted to, whether such exception relates to receiving improper, or rejecting proper testimony, or to the final judgment of the court upon the law and evidence.

SEC. 23. Exceptions taken to opinions or decisions of the district courts overruling motions in arrest of judgment, motions for new trials, and for continuance of causes, shall be allowed; and the party excepting, may assign for error any opinion so excepted to.[19]

SEC. 24. It shall be sufficient for the jury to pronounce their verdict by their foreman in open court, without reducing the same to writing, and the clerk shall enter the same in form,

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set-off any damages sustained in the loss of, or injury to the goods, by the plaintiff's failure to perform his contract. *Ibid.*

And see *Sergeant* v. *Kellog*, 5 Gilm. 277. *Kaskaskia Bridge Co.* v. *Shannon*, 1 Gilm. 25.

Set-off cannot be pleaded to an action upon a judgment, either at common-law, or under the statute. *Rae* v. *Hurlbut*, 17 Ill. 572.

Plea of set-off cannot be interposed to an action of trover. *Keagy* v. *Hite*, 12 Ill. 101.

Nor to a *scire facias* to foreclose a mortgage. *Woodbury* v. *Manlove*, 14 Ill. 216.

Nor against the claim of the landlord in distress for rent. *Sketoe* v. *Ellis*, 14 Ill. 75.

(18) Depositions used upon the trial are not within this provision. *Rawson* v. *Curtiss*, 19 Ill. 456.

(19) A bill of exceptions will not lie to the opinion of the court overruling a motion to set aside a default. *Wallace* v. *Jerome*, 1 Scam. 524. *Gillett* v. *Stone*, 1 Scam. 542.

Nor where a new trial is *granted*. *Brookbank* v. *Smith*, 2 Scam. 78.

under the direction of the court, and if either party may wish to except to the verdict, or for other causes to move for a new trial, or in arrest of judgment, he shall, before final judgment be entered, give notice, by himself, or counsel, to the opposite party or his counsel, of the exception or motion, and, if demanded, shall furnish to the opposite party or his counsel the points, in writing, particularly specifying the grounds of such motion, and shall also furnish the judge with a copy of the same; and final judgment shall thereupon be stayed until such motion can be heard by the court; but no more than two trials shall be granted to the same party in the same case, nor shall any verdict or judgment be set aside for irregularity only, unless cause be shown for the same during the sitting of the court at the term such verdict or judgment shall be given.

SEC. 25. Whenever an entire verdict shall be given on several counts, the same shall not be set aside, or reversed, if any one or more of the counts be good; but if one or more of the counts be faulty, the defendant may apply to the court to instruct the jury to disregard such faulty counts.

SEC. 26. In cases of attachment against absent or absconding debtors, the attaching creditor or creditors shall, on the return of the attachment, or at the term of the court, where the same is made returnable, file a declaration, with a copy of the instrument or account on which the attachment was issued, as in other cases, after which the cause shall proceed as in other cases; and if no declaration shall be filed, the defendant on entering his appearance shall have a judgment against the attaching creditor for costs.[20]

SEC. 27. Any person for a debt *bona fide* due, may confess judgment by himself or attorney, duly authorized, without process; and confession of judgment, whether with or without process, shall operate as a release of all errors in the entering up of the judgment, or making record thereof; and said judgment may be entered at any time in vacation, upon filing the proper papers with the clerk of said court,[21] and shall have the same force and effect, as if entered in term-time, and shall be a

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(20) A plea in abatement to the affidavit in an attachment suit, will not preclude a party from, at a subsequent term, moving to dismiss the suit for want of a declaration filed at the return term. *Stoddard* v. *Miller*, 29 Ill. 291.

The statute applies as well to actions where there is personal service, as where there is not. *Ibid.*

(21) The record must show an assent by the plaintiff to the entry of judgment by confession. *Thayer Aldrich & Co.* v. *Perley*, 36 Ill. 234.

The entry of judgment by confession made before the clerk, is not a judicial act; the judgment is a mere conclusion of law upon a contract acknowledged of record. *Durham* v. *Brown*, 24 Ill. 94. *Hall* v. *Marks*, 34 Ill. 363.

Where such judgment is confessed by attorney, the power of attorney authorizing such confession, is one of the proper papers; and it is indispensable that it should appear in the record. 24 Ill. 94.

The proper papers to authorize a confession of judgment before the clerk, are, *first*, a declaration lien upon the lands and tenements, and every right and interest therein, of the defendant, from the date of the entry thereof, in like manner as if entered in term-time; and execution may issue thereon at any time after the entry thereof.

SEC. 28. The district court, in all cases, both civil and criminal, shall only instruct the petit jury as to the law of the case; and such instructions shall be reduced to writing, and may be taken by the jury in their retirement, and returned by them, with their verdict, into court; and when instructions are asked which the judge cannot give, he shall, on the margin thereof, write the word "refused," and on such as he approves, he shall write, on the margin thereof, the word "given;" and he shall in no case, after instructions are given, orally qualify, modify, or in any manner explain the same to the jury: *Provided*, That upon request of both parties such instructions may be given orally, but in such case if either party except to such instructions, the same and every part thereof shall immediately be reduced to writing, and may be taken by the jury when they retire.

SEC. 29. Every person desirous of suffering a non-suit on trial, shall be barred therefrom, unless he do so before the jury retire from the bar.[22]

upon the plaintiff's cause of action; *second*, a warrant of attorney to make confession, verified by proof of its execution, and *third*, a plea of confession. *Rounds* v. *Hunt*, 24 Ill. 600. *Hinds* v. *Hopkins*, 28 Ill. 350.

When these papers are filed, it is the duty of the clerk to enter judgment; and he has no authority to inquire into the sufficiency of the papers, or the fact of the execution of the warrant of attorney. 24 Ill. 600.

A recital in the entry of the judgment, that due proof of the execution of the power of attorney was made will not supply the place of such proof. 24 Ill. 600.

The defendant, if aggrieved, may apply to the court in term-time to vacate the judgment; and from the decision of the court upon this motion either party may prosecute an appeal. *Ibid.* 36 Ill. 79, 510.

No intendments will be indulged in as to sustain a judgment so confessed. 24 Ill. 600.

If the defendant be let in to plead, the practice is not to set aside the judgment, but to allow it to stand as security to the plaintiff, pending the trial of the issue. *Gordon* v. *Goodell*, 34 Ill. 429.

Confession cannot be made by attorney acting under a warrant of attorney, more than a year and day after its execution, without affidavit that defendant is still living, and the indebtedness is still due and unpaid. *Hinds* v. *Hopkins*, 28 Ill. 350. *Resing* v. *Brainard*, 36 Ill. 79. *Farwell* v. *Meyer*, 36 Ill. 510.

The judgment will not, upon writ of error, be reversed for the mere failure to file such affidavit. 36 Ill. 79, 510.

A motion to set aside a judgment by confession entered four terms previously is not in apt time. *Austin* v. *Lott*, 28 Ill. 519.

(22) If the jury, after once retiring, return into court, and further instructions are given, the plaintiff may submit to a non-suit before they again retire. *Berry* v. *Savage*, 2 Scam. 262.

Where the cause is tried by the court without a jury, the plaintiff may submit to a non-suit after the opinion is announced, and before any entry of judgment is made. *Howe* v. *Harroun*, 17 Ill. 494.

Or, in replevin, after judgment of *retorno* is given, and before the defendant's damages are assessed. *Adams* v. *Shephard*, 24 Ill. 464.

After confession of a judgment under a warrant of attorney, the defendant was admitted to defend, the judgment not being vacated; pending a trial upon defendant's pleas, the plaintiff offered to submit to a non-suit: *Held*, That he was entitled to do so. *Gordon* v. *Goodell*, 34 Ill. 435.

The courts have no power to compel the plaintiff to submit to non-suit; he has a right to insist upon a verdict. *Amos* v. *Sinnott*, 4 Scam. 447. *The People* v. *Browne*, 3 Gilm. 88.

SEC. 30. Interpreters may be sworn truly to interpret, when necessary.[23]

SEC. 31. When judgment shall be arrested for any defect in the record of proceedings, after the first process, the plaintiff shall not be compelled to commence his action anew, but the court shall order new pleadings, to commence with the error that caused the arrest.

SEC. 32. In all cases where a tender shall be made, and full payment offered, by discount or otherwise, as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterwards will sue for the debt or goods so tendered; or if suit has already been commenced, and tender shall be made and full payment offered, together with the amount of costs already accrued, and the party to whom such tender shall be made shall continue to prosecute such cause; then, in either case, the plaintiff shall not recover any costs in such suit; and any party pleading a tender shall pay the same into court.

SEC. 33. It shall not be necessary to file a declaration in any *scire facias* to revive a judgment or foreclose a mortgage, in any court of record in this territory.

SEC. 34. The clerks of the several district courts shall keep a fee-book, in which shall be clearly and distinctly set down in items, under the proper title, the costs of each suit, including the sheriff's and witnesses' fees, as well as the clerk's fees, noting distinctly what fees have accrued upon the part of each party, which fee-book shall be a public record; and whenever any suit shall be determined, and final judgment entered, the costs and charges of each party litigant shall be made up, and the costs of the prevailing party shall be included in the judgment, and the clerk shall always send out a bill of costs with the execution; and the costs of the party failing in the suit shall be collected by fee-bill in the manner prescribed by law.[24]

SEC. 35. If any clerk shall issue a fee-bill, or bill of costs, with an execution, without first entering the same in his fee-book; or if any such bill of costs, or fee-bill, shall be issued, which shall not, in substance, be a copy of the recorded bill, the same shall be void; and any person having paid such bill of costs or fee-bill, may recover from the clerk the amount thereof, with costs of suit, in any court having cognizance thereof; and in every bill of costs to be made and recorded as aforesaid, the names of the witnesses shall be stated, with the number of days each attended at every term.

SEC. 36. It shall not be necessary to insert in the judgment,

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(23) Either party may contradict the translation of the testimony given by the interpreter. *Schnier* v. *The People*, 23 Ill. 17.

(24) See *Reddick* v. *Cloud's Admrs.*, 2 Gilm. 677.

other than the docket-book, the costs of the prevailing party, except in cases where a complete record shall be required; but the fee-book of the clerk shall be taken and deemed a part of the record, subject however at all times to the correction of the court.

SEC. 37. The clerks of the several district courts, shall provide and keep, in their respective offices, well-bound books, for entering therein an alphabetical docket of all judgments and decrees rendered in their respective courts; and it shall be the duty of the said clerks, during every term, or within thirty days thereafter, to enter, in such docket, all final judgments and decrees rendered at such term, in alphabetical order, by the name of the person against whom the judgment or decree was entered, which shall contain, in columns ruled for that purpose, the names of the parties, the date, the nature of the judgment or decree, the amount of the debt, damages, and costs, the book and page in which it is entered, and leaving a blank column or columns, for entering a note or memorandum of the satisfaction or other disposition thereof; and when any judgment or decree shall be satisfied by execution or otherwise, or shall be set aside, the clerk shall enter a memorandum thereof, in the column left for that purpose, showing how disposed of, and the date, book, and page where the evidence thereof is recorded; and such docket may be searched at all reasonable hours, without fee; and every clerk who shall fail to keep such docket, or to enter therein any judgment or decree, as aforesaid, shall forfeit and pay a sum not exceeding two hundred dollars, nor less than fifty dollars, and costs of suit; one half to the use of the county where such court is held, and the other half to the use of any person who will sue for the same, to be recovered by action of debt in the district court.

SEC. 38. Whenever any sheriff or coroner shall neglect or refuse to make return of any execution to him directed and delivered, where the same shall be made returnable, or shall refuse or neglect to pay over any moneys collected on such execution, the parties suing out such execution, on giving to such sheriff or coroner ten days' notice, in writing, of his, her or their intention, may apply at the next term of the district court for relief; and it shall be the duty of such court, on proof, by affidavit, of the delivery of such execution, if the same be not returned, or on proof that such money has been collected, and not paid over, to grant an order against such sheriff or coroner, requiring him to make immediate return of such execution, or if the amount, or any part thereof, has been collected, to pay over the same immediately, with thirty per cent. thereon from the time of collection till paid; and on failure of such sheriff or coroner to comply with such order, on demand and being served with a copy of the order, he shall be judged to be in contempt, and punished accordingly; or the plaintiff in such execution may have judgment for the money, with thirty per cent. thereon, so collected, and have execution as in other cases.[25]

SEC. 39. The clerk shall enter in a book, to be kept by him for that purpose, the returns of the sheriff or coroner of all executions, within thirty days after the same shall have been returned, under the penalty imposed by the thirty-seventh section of this chapter.

SEC. 40. A party out of term may file a motion to quash an execution, writ of replevin, writ of attachment, bond, or other proceedings, and apply to the judge at his chambers for a hearing of the same, by giving to the opposite party, or his attorney, reasonable notice of the application; and upon the hearing of said motion the said judge may require new or additional security to be given, or may grant an order staying all proceedings in the case.

SEC. 41. Appeals to the supreme court from the district court shall be allowed in all cases where the judgment or decree appealed from be final, and shall amount, exclusive of costs, to the sum of twenty dollars, or relate to a franchise or free-hold: *Provided*, Such appeal be prayed for within three days after the time of rendering the judgment or decree: *And provided*, The party praying for such appeal, shall, by himself, or agent, or attorney, give bond with a sufficient surety, to be approved by the district court, (or the clerk thereof, when the order granting such appeal may so direct) and filed in the office of the clerk of the district court, within the time limited by the court; which bond shall be in a reasonable sum sufficient to cover the amount of the judgment appealed from, and costs, and conditioned for the payment of the judgment, costs, interest, and damages, in case the judgment shall be affirmed, and also for the due prosecution of the appeal; and the obligee in such bond may at any time, on a breach of the condition thereof, have and maintain an action at law as on other bonds. The supreme court may, in its discretion, allow defective appeal-bonds to be amended.[26]

SEC. 42. The appellant shall lodge in the office of the clerk of the supreme court an authenticated copy of the record of the judgment or decree appealed from, by or before the third

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(25) The term "thirty per cent.," etc., is construed to mean "thirty per cent. per annum." *Beard* v. *Foreman*, 1 Scam. 40.

This section applies only in the case of a sheriff refusing or neglecting to return an execution, or efusing or neglecting to pay over money actually collected on execution; for other official misonduct, the party injured may have his action upon the sheriff's official bond. *Day* v. *Hackney t al.*, 20 Ill. 136.

(26) A writ of error lies, notwithstanding the judgment of the court below does not, exclusive of osts, amount to twenty dollars: the remedy provided by this section is merely cumulative to the ommon-law remedy, by writ of error. *Bowers* v. *Green*, 1 Scam. 42.

day of the next term of said supreme court: *Provided*, That if there be not thirty days between the time of making the appeal and the sitting of the supreme court, then the record shall be lodged, as aforesaid, at or before the third day of the next succeeding term of said supreme court; otherwise the said appeal shall be dismissed, unless further time shall have been granted by the supreme court, for good cause shown.[27]

SEC. 43. In all cases of appeals and writs of error, the supreme court may give final judgment, and issue execution, or remand the cause to the district court in order that execution may be there issued, or that other proceedings may be had thereon.

SEC. 44. When an appeal or writ of error shall be prosecuted from the judgment of any district court of this territory to the supreme court, and said appeal or writ of error shall be dismissed, or the judgment of the district court affirmed, it shall be the duty of the clerk of the district court from which said appeal or writ of error was prosecuted, upon a copy of the order of the supreme court, dismissing said appeal or writ of error, or affirming said judgment, being filed in his office, to issue execution upon such judgment, and to proceed thereon in all respects as though no appeal or writ of error had been prosecuted from said judgment.

SEC. 45. In all cases where a judgment or decree shall be rendered in any district court, in any case whatever, either in law or in chancery, against two or more persons, either one of said persons shall be permitted to remove said suit to the

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An appeal will not lie from an order dissolving an injunction, where the bill prays other relief; otherwise if the injunction is the only relief prayed, and the order has the effect of a dismissal. *Pentecost* v. *Magehee*, 4 Scam. 327.

Nor from an order sustaining a demurrer to a cross-bill. *Fleece* v. *Russell*, 13 Ill. 33.

Nor from an order refusing a motion to correct a fee-bill. *Smith* v. *Coats*, 19 Ill. 405.

Nor from a judgment relating to a franchise or freehold, unless directly the subject of the action. *Rose* v. *Choteau*, 11 Ill. 167.

Nor from a decree entered by consent. *Armstrong* v. *Cooper*, 11 Ill. 540.

Nor from a judgment in favor of the appellant. *Addix* v. *Fahnstock*, 15 Ill. 448.

Nor from an order setting aside a judgment by confession, rendered at the same term. *Bolton* v. *McKinley*, 22 Ill. 203.

A joinder in error will give the supreme court jurisdiction of an appeal even where a writ of error is the appropriate remedy. *Ryan* v. *Anderson*, 24 Ill. 652. *Bolton* v. *McKinley*, 19 Ill. 404.

An appeal lies from a judgment of condemnation in proceedings by a municipal corporation to condemn lands for the purposes of public improvement. *Morris* v. *City of Chicago*, 11 Ill. 650.

The court has no power to impose conditions other than those specified in the statute. *Emerson* v. *Clark*, 1 Scam. 596.

Where an executor is the appellant, it is sufficient if the bond be conditioned for the payment of the judgment, &c., in due course of administration. *Mason, Exr.* v. *Thomas*, 24 Ill. 160.

(27) The term making the appeal, refers to the order of the court allowing the appeal, and not to the subsequent compliance with the order, by the execution of a bond. *Vance* v. *Schuyler*, 4 Scam. 286.

The appellee cannot be compelled to join in error, at the first term succeeding the appeal, where the appeal was prayed within thirty days of the commencement of the term. *Hagar* v. *Phillips*, 13 Ill. 292.

If the record is not filed within the first three days of the term, the appeal will be dismissed, unless within that time, further time has been granted to appellant; the pendency of a motion for such further time, will not prevent the dismissal of the appeal. *Frink* v. *Phelps*, 4 Scam. 581.

supreme court by appeal or writ of error, and for that purpose shall be permitted to use the names of all said persons, if necessary; but no costs shall be taxed against any person who shall not join in said appeal or writ of error; and all such cases shall be determined in said supreme court as other suits are, and in the same manner as if all the parties had joined in said appeal or writ of error.

SEC. 46. The supreme court, in case of a partial reversal, shall give such judgment or decree as the inferior court ought to have given, or remand the cause to the inferior court for further proceedings, as the case may require.

SEC. 47. A writ of error shall not be brought, after the expiration of five years from the rendition of the judgment complained of; but when a person, thinking himself aggrieved by any judgment or decree, that may be reversed in the supreme court, shall be an infant, *femme covert*, *non compos mentis*, or imprisoned, when the same was rendered, the time of such disability shall be excluded from the computation of the said five years.

SEC. 48. No writ of error shall operate as a *supersedeas,* unless the supreme court, or, if application be made therefor in vacation, some justice of the supreme court, after inspecting a copy of the record in the cause, shall order such writ of error to be made a *supersedeas;* nor until the party applying for such writ shall file a bond in the office of the clerk of the supreme court, with the conditions required in cases of appeals, approved by the court or justice allowing such order for a *supersedeas*, or, if such order shall so direct, then by the clerk of some court of record; the clerk issuing such writ of error, shall indorse thereon that it shall be a *supersedeas*, and operate accordingly; and the parties in writs of error, shall be subject to the same judgment and mode of execution as provided in cases of appeal.

SEC. 49. Whenever the supreme court shall be equally divided in opinion, on hearing an appeal or writ of error, the judgment of the court below, shall stand affirmed.

SEC. 50. Any instrument of writing, to which the maker shall affix a scrawl, by way of seal, shall be of the same effect and obligation to all intents, as if the same were sealed.

SEC. 51. In all cases of appeals to the supreme court, where the appellant shall fail to prosecute the appeal, the supreme court shall, upon dismissing the appeal, enter judgment against the appellant for not less than five, nor more than twenty per cent. upon the amount of the judgment, for damages, in consequence of the delay occasioned by the appeal.

SEC. 52. In cases of appeals to the district court from judgments of justices of the peace, the appellee shall be entitled to judgment, not exceeding twenty per cent. damages on the amount of the judgment, if the appeal is dismissed for want of prosecution, or if the court shall be satisfied that the appeal was prosecuted for the purposes of delay.

SEC. 53. In actions in the name of the assignee upon bonds, notes, and all writings made assignable by law, the plaintiff shall not be held bound to prove the assignment or signature of the assignor, unless the fact of the assignment be put in issue, by plea verified, by the affidavit of the defendant, or some credible person, stating that he verily believes the facts stated in the plea are true.[28]

SEC. 54. Whenever a plaintiff in any civil action pending in any court of record in this territory, shall file in the office of the clerk of the court wherein such cause is pending an affidavit, showing that the defendant or defendants in such suit, or any one or more of them, resides or reside, or hath gone out of this territory, or that such defendant or defendants is or are concealed within this territory, or avoid service of process, so that process cannot be served upon him, her, or them, or that such defendant or defendants upon diligent inquiry cannot be found within this territory, it shall be the duty of the clerk, to cause a notice to be published in some newspaper, published in the county in which such cause is pending, or, if no newspaper is published in such county, then in a newspaper published nearest to such county, for four successive weeks prior to the next term of the court in which such action is pending, which notice shall set forth and state the title of the court in which such action is pending, the nature of the action, and, if such action shall be brought to recover money, the amount claimed by the plaintiff, the names of the parties, and the time when, and the place where, the next term of court in which such action is pending will be held, and that if the defendants shall fail to appear at the term of court, and plead or demur, judgment will be entered by default.

SEC. 55. It shall be the duty of the plaintiff, in all cases in which notice shall be published, as provided in section fifty-four of this chapter, in addition to such publication, to leave, or cause to be left, at the usual place of abode of the defendant or defendants, with some person above the age of twelve years, if any, named in such notice, (and if no such person shall then be found there, then the same shall be posted in some conspicuous place upon such abode,) a true copy of such notice, at least

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(28) This section is applicable to trials in justices' courts. *Archer* v. *Bogue*, 3 Scam. 528.

The defendant may introduce evidence disproving the assignment, although it be not denied under oath; the statute merely dispenses with proof of the assignment in the first instance. *Lockridge* v. *Nuckolls*, 25 Ill. 180.

An affidavit that "the signature to the indorsement upon the note sued on in this cause is not in the handwriting of the said ——," is not sufficient to put in issue such assignment. *Davis* v. *Cleghorn*, 25 Ill. 213.

twenty days prior to the term of court mentioned therein, unless such plaintiff shall, after diligent inquiry, be unable to find any place of abode of such defendant or defendants, within this territory. It shall also be the duty of such plaintiff, if upon diligent inquiry the place where the defendant or defendants may then be found, can be ascertained, to send to such defendant or defendants, and to each of them, by mail, a true copy of such notice, properly addressed to such defendant or defendants, at the post-office nearest to the place where such defendant or defendants may be found, at least thirty days prior to the term of court mentioned in such notice.

SEC. 56. If the first publication of the notice mentioned in section fifty-four of this chapter, shall not be made at least sixty days prior to the first day of the term of court therein mentioned, or if such notice shall not be left at the usual place of abode of the defendant or defendants, or if such notice shall not be sent by mail, as provided in section fifty-five of this chapter, the cause shall be continued at the cost of the plaintiff, to the next succeeding term of the court.

SEC. 57. If the defendant or defendants shall fail to interpose a defence to the action, the plaintiff, upon filing the certificate of the publisher of the newspaper in which such notice shall be published, showing that notice hath been published, and also the affidavit of some credible person, showing that notice hath been left at the usual place of abode, within this territory, of the defendant or defendants, or that after diligent inquiry, no place of abode of the defendant or defendants can be found within this territory, and also, that notice hath been sent, by mail, to the defendant or defendants, or that after diligent inquiry, the place where the defendant or defendants may be found, cannot be ascertained, as provided in this chapter, shall be entitled to judgment against the defendant or defendants mentioned in such notice, as is now provided by law, in cases where personal service of process upon defendants hath been made.

SEC. 58. At any time within one year after execution shall be issued, upon any judgment rendered as provided in section fifty-seven of this chapter, any defendant against whom judgment shall have been rendered, and who shall not have been personally served with process, and who shall not have entered an appearance in the action in which such judgment hath been rendered, may, after giving reasonable notice to the plaintiff, apply to the court in which the record of such judgment may be found, to set the same aside, and to permit such defendant to defend such action; and if upon such application, it shall satisfactorily appear to the court, that the defendant or defendants so applying, had no such actual notice of the pendency of the suit as would have enabled him, her, or them, to interpose a defence to the action before judgment was rendered therein, and also, that such defendant or defendants have a good defence to the action, upon the merits, the court shall set aside and vacate such judgment, at the costs of the defendant or defendants so applying, and the cause shall thereafter proceed to trial and judgment, in all respects, as if such defendant or defendants had originally appeared to the action.

SEC. 59. If the plaintiff shall not sue out execution upon the judgment rendered, as provided in section fifty-seven of this chapter, within one year next after such judgment shall be rendered, the same shall, as to all the defendants not personally served with process, be, and become absolutely null and void, and of no effect whatever; but such avoidance of the judgment, shall not be held or construed to prohibit, or in any manner affect the right of the plaintiff to bring a new action for the same cause.

SEC. 60. The provisions of sections fifty-four to fifty-nine, both inclusive, of this chapter, shall apply to cases wherein foreign corporations and companies are defendants, except in cases where service may be had upon the president, clerk, secretary, cashier or agent of any such corporation or company, as provided in section four of this chapter; and in all such cases, service as provided in said section four, shall be deemed and held to be sufficient to authorize a judgment against any incorporated company, whether foreign or domestic. The provisions of the sections mentioned above, shall not apply to suits commenced by attachment.

SEC. 61. In all cases pending in any court of record, in which the process shall be served upon the defendant or defendants, or any of them, ten days prior to the term of court, at which the same shall be made returnable, and in all cases in which the defendant or defendants, or any of them, not having been served with process, shall notify the plaintiff of his, her, or their intention to enter his, her, or their appearance at the next term of the court, ten days prior to such term, the defendant or defendants, upon entering his, her, or their appearance in the cause, shall be entitled to a rule upon the plaintiff, requiring such plaintiff to file a declaration in the case, within three days after such rule shall be entered.

SEC. 62. In all cases in which a writ of error shall be issued, the clerk of the supreme court shall also issue a *scire facias*, or summons to hear errors, directed to the sheriff or other officer of the proper county, where the defendant or defendants in error reside, or may be found, commanding him to summon the defendant or defendants in error, to appear at the next term of the supreme court, and show cause, if any he or they have, why the judgment or decree mentioned in the writ of error, should not be reversed. If there are several defendants in error, residing in different counties, the plaintiff in error may have separate writs issued to each of the counties where such defendants reside.

SEC. 63. If the plaintiff in error, or other person for him, shall at any time file in the office of the clerk of the supreme court, an affidavit, setting forth that the defendant or defendants, or any of them, has or have gone out of this territory, so that process cannot be served upon him, her, or them, or that he, she, or they are not residents of this territory, or on due inquiry cannot be found, or is or are concealed within this territory, or evade service of process, or that process cannot be served on him, her, or them, it shall be the duty of the clerk to cause publication of notice to such defendant, to be made in some newspaper published in this territory, setting forth the pendency of the writ of error, the names of the parties, and the time when the *scire facias*, or summons, may be returnable; which notice shall be published for four consecutive weeks, and if the first insertion of such notice shall not be made at least sixty days before the return-day of the writ of error, the cause shall be continued to the next succeeding term of the supreme court, and it shall be the duty of the plaintiff in error, or some one for him, to send, post-paid, by mail, a copy of such notice to the defendant or defendants in error, if the place of residence of him or them shall be known to, or, after diligent inquiry, can be ascertained by the plaintiff in error; and upon filing a certificate of the publication of such notice, made by the publisher of the newspaper in which the same shall be published, together with an affidavit that copies of such notice have been sent to the defendant or defendants in error, as herein provided, or that the residence of such defendant or defendants is unknown to, and cannot, after diligent inquiry, be ascertained by the plaintiff in error, the cause shall proceed as if the defendant or defendants had been personally served with process.

SEC. 64. No citizen of the territory of Colorado, in the military service of the United States, shall be subject, as defendant, to the provisions of sections fifty-four to sixty-three, inclusive, of this chapter.

SEC. 65. Any party plaintiff to a cause in any of the courts in this territory, may, at any time, either in term-time or vacation, file with the clerk of the court in which said suit is pending, a written order for the dismissal of said cause, signed by the ~~said~~ plaintiff, or by the attorney of record in the cause; and the clerk of said court shall thereupon enter an order of dismissal on the records, and may at once issue a fee-bill for the collection of the costs in said case, against the said party plaintiff, and the said cause, upon said order of dismissal being filed, shall no longer be considered as pending in said court.

SEC. 66. The party aggrieved by manifest and material error appearing of record, in any prosecution by indictment, may be relieved by writ of error, upon complying with the following terms: The party complaining that error has been committed shall, on demand therefor, be furnished by the clerk, with a certified copy of the record, which record, together with an assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof; and if, after inspecting such transcript, the court or justice aforesaid shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted by order indorsed on the back of said transcript. Upon the allowance of such writ of error as aforesaid, the clerk of the supreme court shall issue a *supersedeas* to stay the execution of the sentence of the district court, but the prisoner shall not thereby be discharged from jail: *Provided*, That the prisoner may enter into recognizance, as provided by law in bailable cases. When any judgment, the execution of which has been stayed by writ of error, as aforesaid, shall be affirmed, the supreme court shall, by proper order, cause the original sentence of the district court to be carried out, and in capital causes fix the time of the execution of the prisoner, a copy of which order shall be sufficient authority to the sheriff or other officer, for carrying out the original sentence and judgment of the district court, and in capital cases, the execution of any prisoner therein mentioned at the time specified.

SEC. 67. No punishment shall be inflicted in any case brought before the supreme court under the provisions of this chapter, unless a majority of the justices of said court concur in respect to such punishment.

Prior Statutes Repealed. An act concerning Practice in Civil Cases. Approved November 5, 1861. Laws 1861, p. 275.

An act authorizing the Dismissal of Causes in Vacation. Approved August 11, 1862. Laws 1862, p. 101.

An act to amend an act entitled An act concerning Practice in Civil Cases. Approved February 23, 1864. Laws 1864, p. 111.

An act to further amend an act entitled An act concerning Practice in Civil Cases. Approved March 9, 1864. Laws 1864, p. 116.

An act to exempt Soldiers from Service by Publication in Suits at Law. Approved March 11, 1864. Laws 1864, p. 117.

An act concerning Practice in the Supreme Court. Approved February 8, 1865. Laws 1865, p. 91.

CHAPTER LXXI.

PROBATE COURTS.

SECTION
1. Probate court established in each county.
2. Election of probate judge; term of office; oath; bond; to keep office at county-seat.
3. Probate judges to exercise the same jurisdiction as justices of the peace.
4. To have jurisdiction of actions of debt, etc., to which executors etc. parties.
5. Ministerial powers; to administer oaths, grant letters testamentary, and of administration and guardianship, and repeal same, to take probate of wills, to receive and file inventories, sale-bills, etc., to require settlement of accounts by guardians and administrators, and to issue attachments for the purpose, to take acknowledgments of deeds and depositions.
6. To sit on the first Monday of each month; to have a seal; to issue process under seal; to record proceedings.
7. Appeals and *certiorari* to district court.
8. Process, etc., with private seal of judge affixed, valid when no public seal.
9. Administrators etc., may be sued on official bonds in probate courts.
10. Probate judge to make a record of all proceedings before him and file and preserve all papers pertaining to settlement of estates.
11. Penalty for failure to make record within ten days after proceeding had.
12. Certified copy of record evidence.
13. Process how directed and served; fees for service.
14. Probate judge to record accounts of administrators, etc.
15. Process, letters of administration etc., to be issued in name of people, tested in name of judge, and sealed with seal of court.
16. Probate judge has jurisdiction of all controversies touching probate of wills, and right of administration.
17. Special election in case of vacancy in office.
18. Fees.
19. Appeals to district court.
20. Parties entitled to trial by jury.
21. Removal of executors or administrators failing to account.
22. This act in force from its passage.
23. Justices of peace and probate judges, in certain counties, to have jurisdiction according to this act.
24. Where the amount in controversy does not exceed three hundred dollars.
25. Proceedings to be as now regulated by law.
26. Appeals allowed from justices of the peace to probate courts, except in Gilpin county.
27. Probate courts to have concurrent jurisdiction in law and equity, with district courts, where amount claimed does not exceed two thousand dollars, except in Gilpin county.

SECTION
28. Probate courts governed by same rules of practice as district court.
29. County clerks to be clerks of probate court, except in Gilpin county; fees.
30. Terms of court.
31. To be courts of record; scrawl to be used in lieu of seal, until seals provided.
32. Grand and petit jurors not to be summoned; jury, when demanded, to be summoned as in actions before justices of the peace.
33. Process to be directed to sheriff or any constable; governed in all other respects by law regulating process issuing out of district court.
34. Fees of officers serving process, and jurors, and witnesses.
35. Power of court to compel attendance, and punish for contempt.
36. Repealed.
37. Docket-fee of judges.
38. This act not to affect pending causes.
39. In force from its passage.
40. Six terms of probate court, commencing on the first Mondays of February, April, June, August, October and December.
41. Probate courts not to have equity jurisdiction except in relation to estates of deceased persons, and upon bills of discoveries, etc.
42. To have jurisdiction in suits for recovery of money, or for or concerning real or personal property, not exceeding two thousand dollars, except in Gilpin county; not to have any other jurisdiction.
43. Appeals to district court.
44. Condition of appeal bond.
45. Trial to be *de novo*; no exception allowed to form of process, if defendant appeared below.
46. Appeal to be prayed in three days after entry of judgment, etc., summons out of district court unnecessary; *proviso*, appeal not to be tried if papers not filed in district court ten days before term.
47. Appeals and writs of error to supreme court, allowed.
48. Probate judges have power to grant injunctions but not to dissolve same.
49. Probate judge may act as clerk; fees.
50. Where probate judge acts as clerk, process to issue in his name.
51. This act and the act of March 11, 1864, extended to Arapahoe county.
52. Section fourteen of act of March 11, 1864, and all prior acts conflicting with this act repealed.
53. This act in force from its passage.
54. Jurisdiction of justices in replevin.
55. Jurisdiction of probate courts in replevin.
56. Conflicting acts repealed.

An act concerning Probate Courts.

[*Approved November* 7, 1861. *Laws* 1861, *p.* 382.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. There shall be and is hereby established in each county in this territory, a court of probate, to be composed of one officer, to be styled a probate judge.

SEC. 2. Such probate judges shall be elected at the general elections, to be held in their respective counties as provided by law, in the same manner as provided for the election of other county officers, and shall hold their offices for the term of two years, and until their successors shall be elected and qualified. The said probate judges so to be elected under the provisions of this act, shall hold and keep their offices, at the county-seats of their respective counties, and shall take the same oath, in the same manner, and give like bond and security, as are required of other county officers.

SEC. 3. Said probate judge is hereby vested with the same powers and jurisdiction,[1] which are or shall be conferred by law upon justices of the peace, and in the exercise of such powers and jurisdiction the rules of law which are or shall be applicable to ordinary justices of the peace shall be applicable to the probate judges hereby created, and to all the proceedings before them, growing out of such power and jurisdiction; and appeals may be taken from, and writs of *certiorari* prosecuted upon, their judgments, rendered under the power conferred in this section, in the manner provided in case of similar judgments rendered by justices of the peace.

SEC. 4. The said judge hereby created, shall also have jurisdiction of all cases of debt and *assumpsit*, express or implied, where executors or administrators shall be parties, plaintiff or defendant, and when the amount, on either side, claimed to be due, shall not exceed one hundred dollars.

SEC. 5. In addition to the judicial powers conferred in the preceding sections, the said probate judges shall have, possess and exercise, within their respective counties, the following ministerial powers, to wit: *First*, Power to administer all oaths or affirmations, concerning any matter or thing before them. *Second*, To issue and grant letters of administration, letters testamentary, and letters of guardianship, and repeal the same. *Third*, To take probate of wills and record the same. *Fourth*, To determine the person or persons entitled to letters of administration, or to letters testamentary, and, in general, to do and perform all things concerning the granting of letters testamentary, or of administration, or of guardianship. *Fifth*, To receive, file and record inventories, appraisement-bills, and sale-bills, as is required by the existing laws. *Sixth*, To require executors, administrators, and guardians to exhibit and settle their accounts, and to settle for the estates and property in their hands, and for that purpose they may issue citations and attachments into every county in this territory, to be executed by the sheriffs of said counties. *Seventh*, To take and certify acknowledgments and proofs of deeds, and other instruments, to take affidavits and depositions, and to administer oaths to the same extent, and with like effect, as justices of the peace.

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(1) Act of August 16, 1862. Laws 1862, p. 55.

SEC. 6. The said courts shall sit in their respective counties throughout this territory, on the first Monday of every month, and at such other times as extraordinary circumstances may require, and continue open until all the business pending before them shall be disposed of. The said courts shall each have a seal, and may issue all process necessary, and under the hand and seal of the probate judge, and all such process shall bear date when issued. The said probate judge shall record all his proceedings at length, in a book or books by him for that purpose furnished, and for all such books so furnished, the respective counties shall allow the said probate judge a reasonable compensation, to be paid out of the county treasury.

SEC. 7. All matters of law and of fact, shall be determined by the said court, when properly before it; and in all cases an appeal or writ of *certiorari* shall lie to the district court of the county, to be prosecuted in the same manner as appeals and writs of *certiorari* are prosecuted from the decisions of justices of the peace.

SEC. 8. Letters of administration, letters testamentary, and all process, certificates, and all other papers, made or issued by probate judges, to which the private seal of such judge is or may be affixed, because of there being no public seal, shall be as valid, to all intents and purposes, as though a public seal had been used.

SEC. 9. Administrators and executors, and their sureties may be sued on their bonds in the probate court, subject to the limitation contained in section four of this act, and the proofs and proceedings shall be as in ordinary cases.

SEC. 10. The probate judges shall make, keep, and preserve complete records of all wills, testaments, and codicils, and the probate thereof, all letters testamentary, and of administration, and all bonds taken of executors or administrators, and shall file and preserve the originals of the aforesaid papers, and all inventories, appraisements, sale-bills, and other exhibits, presented to and received by said courts, appertaining to the administration and settlement of estates, and shall enter on their order-books the amount of all such inventories, appraisements, sale-bills, and other exhibits, under a proper heading, for easy reference, and shall enter upon their books of record, all matters, controversies and suits that shall arise for decision or adjudication before them, with the names of the parties, and the judgment or opinion of the court, in order that there may be no difficulty in taking appeals.

SEC. 11. It shall be the duty of each and every probate judge to enter, in the proper books of his office, a full and perfect record of all orders, judgments, and decrees, which may be made by such officer, when acting as such, and the duties of probate judges; and for failure or neglect so to do, before the expiration of ten days from the time of making the same, he shall be held guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than one hundred dollars.

SEC. 12. All such entries as specified in the two preceding sections, made by probate judges, or a certified copy thereof, under the hand and seal of the said probate judge, shall be good evidence, where evidence is required of such entries and proceedings, in all the courts of law and chancery in this territory, any law to the contrary notwithstanding.

SEC. 13. The probate judges shall have power to issue all process necessary to enforce the judgments and decrees of said court, which process shall be directed to the sheriff, or to any constable of the county; and any sheriff or constable to whom such process shall be directed, is hereby authorized and required to execute the same; and they shall be entitled to the same fees as are allowed for serving like process issued by a justice of the peace.

SEC. 14. The probate judges shall provide well-bound books, and enter therein the accounts of executors and administrators, so as to make the same complete records of all accounts allowed and all settlements of estates made in said courts.

SEC. 15. All letters testamentary, letters of administration, either with or without the will annexed, letters of administration to collect, and *de bonis non*, writs, summonses, citations, subpœnas, and all other processes, which, at any time may be made or issued by the judge of probate in the discharge of his duties, shall be made and issued in the name of the people of the territory of Colorado, bear *teste*, in the name of the probate judge, and be sealed with the seal of the said probate court.

SEC. 16. The probate judges, in their respective counties, shall have jurisdiction and authority to hear and determine all causes, matters, and controversies testamentary, which shall be brought before them, touching the proof of wills, testaments, and codicils, and may grant probate thereof; and shall hear and determine the right of administration of estates, of persons dying intestate, and do all other things touching the granting of letters testamentary and of administration, and the settlement of estates.

SEC. 17. When any probate judge shall die, resign, refuse to qualify, or be removed from office, or the office shall in any way become vacant, such office may be filled by a special election, to be called and held in the same manner as in the case of county officers; and if any probate judge shall refuse to qualify, and give bond, in manner and within the time specified in case of the justices of the peace, the office shall, in like manner, be deemed vacant.

SEC. 18. Probate judges, when acting as ordinary justices of the peace, shall be entitled to the fees allowed by law to the justices of the peace for similar services; and when acting under the powers usually exercised by judges of probate, they shall be allowed such fees as shall be from time to time allowed by law.

SEC. 19. Appeals may be taken from all judgments, decrees, and decisions rendered by probate judges, while acting in the capacity of judges of probate, whether such acts be performed in their judicial or ministerial character; such appeals to be taken and prosecuted in the same manner, and with like effect, as appeals from the judgments and decisions of justices of the peace.

SEC. 20. Parties litigant in suits before such probate judges, whether acting as courts of probate, or when exercising the jurisdiction of justices of the peace, shall be entitled to trial by jury, as is provided in suits before justices of the peace.

SEC. 21. When any executor or administrator shall remove without the limits of this territory, it shall be the duty of the probate judge of the proper county, upon affidavit being filed, of such removal, by any person interested in the estate in the hands of the executor or administrator so removing, to cause notice to be published by posting the same at the court-house door of the proper county, stating that said affidavit has been filed, and notifying the said executor or administrator to appear before him, within thirty days after the date of said notice, and make a settlement of his accounts as now required by law; and in case said executor or administrator shall neglect or refuse to make said settlement, as aforesaid, it shall be the duty of said probate judge, to remove said executor or administrator from office, and to supply the vacancy, as now directed by law in other cases.

SEC. 22. This act shall take effect from and after its passage.

An act concerning Probate Courts and Justices of the Peace in certain counties.

[*Approved March* 11, 1864. *Laws* 1864, *p.* 117.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 23. (I.) That the several justices of the peace and probate judges who now are, or may hereafter be elected and qualified, in the counties of Costilla, Conejos, Huerfano, Lake, Park, Summit, Boulder, Weld, Larimer, Douglas, Clear Creek, Fremont, Jefferson, El Paso, Pueblo, and Gilpin, in this territory, shall have jurisdiction in civil cases, and authority for the redress of wrongs committed against the laws of this territory, as provided in this act.

SEC. 24. (II.) That in all actions and proceedings wherein justices of the peace in this territory now have jurisdiction, as provided in an act entitled "An act concerning justices of the peace and constables," approved Oct. 31st, 1861, and the several amendatory acts thereto, the justices of the peace in the said several counties mentioned in the first section of this act, shall have jurisdiction where the amount in controversy does not exceed three hundred dollars.

SEC. 25. (III.) The proceedings in actions before justices of the peace, in the said counties, shall be as now regulated by law, in cases before such justices in this territory.

SEC. 26. (IV.) Appeals shall be allowed, and may be taken, from the judgments and decisions of the said justices of the peace in the said counties, to the probate courts of the said counties respectively, except the county of Gilpin, in the same manner and under the same restrictions and regulations as now provided by law in cases of appeals to the district court.

SEC. 27. (V.) The probate courts in the said several counties, mentioned in the first section of this act, except the county of Gilpin, shall have concurrent jurisdiction with the district courts in all civil cases at law and in equity, when the debt or sum claimed shall not exceed two thousand dollars.

SEC. 28. (VI.) The said probate courts shall be governed by the rules of practice and proceedings now prescribed by law for the government of the several district courts in this territory, and said courts shall possess chancery, as well as common law jurisdiction.

SEC. 29. (VII.) The county clerks of the said several counties mentioned in the first section of this act, except the county of Gilpin, shall be *ex officio* clerks of the said probate court in their respective counties; and they shall perform the duties respecting the said probate courts, which are performed by the clerks of the district courts, respecting said district courts, and they shall receive the same fees for services performed by them as are now prescribed by law to be paid to the clerks of the district courts.

SEC. 30. (VIII.) The terms of the probate courts for the transaction of business arising under this act, shall be as now provided by law for the transaction of probate business, and process may be issued returnable to such terms, as provided in the act respecting practice in civil cases, and the amendments thereto.

SEC. 31. (IX.) The said probate courts, in the said several counties, are hereby declared to be courts of record; they shall have a seal, and in their respective counties shall possess all the powers now vested in the district courts in this territory, in all matters in controversy where the debt, or sum claimed, does not exceed two thousand dollars: *Provided*, That until seals shall be provided for the use of said courts respectively, the clerks thereof may use a scrawl as a seal.

SEC. 32. (X.) No grand or petit jurors shall be summoned to attend the terms of the said probate courts, as provided in relation to the district courts, but in all causes in the said probate courts, if either party shall demand a jury, the clerk of such court shall issue a *venire* for a jury, and a jury shall be summoned as in cases before justices of the peace.

SEC. 33. (XI.) All process issued by, or out of, the said probate courts, shall be directed to the sheriff or any constable of the proper county, and shall in all other respects be regulated by the law respecting the issuing of process from district courts.

SEC. 34. (XII.) Officers shall receive the same fees for serving process, issued out of said probate courts, as in other cases, and jurors and witnesses shall receive the same fees for attending upon said courts as for attending upon district courts.

SEC. 35. (XIII.) The said probate courts shall have the same power to compel the attendance of jurors and witnesses, and to punish for contempt, as is possessed by the district courts.

SEC. 36. (XIV.) Appeals and writs of error shall be allowed and may be taken and prosecuted from the final judgments and decisions of the said probate court to the supreme court of this territory, in like manner, and under the same restrictions, regulations and provisions of law, as in cases determined in the district courts of this territory.[2]

SEC. 37. (XV.) The judges of the probate courts in the said several counties, mentioned in the first section of this act, except the county of Gilpin, shall receive, in all cases arising under the provisions of this act, a docket fee of five dollars, to be paid at the commencement of the suit, but to be taxed as costs therein.

SEC. 38. (XVI.) Nothing in this act contained shall affect any proceedings now pending before justices of the peace and probate judges; nor shall anything in this act contained, be held or so construed, to apply to any other counties in this territory than those named in the first section of this act.

SEC. 39. (XVII.) This act shall take effect and be in full force from and after the passage thereof.

An act to amend an act entitled "An act concerning Probate Courts and Justices of the Peace in certain counties. Approved March 11th, 1864."

[*Approved February* 8, 1865. *Laws* 1865, *p.* 97.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 40. (I.) That there shall be six terms of the probate

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(2) Repealed, see section 13, of the act of February 8, 1865, p. 530.

court in each of the several counties of this territory, in each year, commencing on the first Mondays in the months of February, April, June, August, October and December in each year.

SEC. 41. (II.) That hereafter the several courts of probate in the several counties in this territory shall not have or exercise jurisdiction as courts of chancery or as courts of equity, except in matters relating to the estates of deceased persons, and except in cases where a bill for discovery may be filed for the purpose of obtaining evidence to be used upon the trial of an action pending in any probate court.

SEC. 42. (III.) The several probate courts in the several counties of this territory, except the county of Gilpin, shall have jurisdiction in all actions, suits and proceedings at law, brought for the recovery of money, not exceeding in amount the sum of two thousand dollars; and in all actions, suits, and proceedings at law, brought or instituted for the recovery of or concerning property, real or personal, not exceeding in value the sum of two thousand dollars; and they shall not have jurisdiction in any other actions, suits or proceedings whatsoever.

SEC. 43. (IV.) Either party, or one or more of several plaintiffs or defendants, may appeal from the final judgment or decision of the probate court to the district court of the county in which such probate court may be located, or if such county shall be attached to another for judicial purposes, then to the district court of the county to which such county shall be so attached, upon giving bond within such time—not less than five days after such judgment or decision shall be rendered,—as may be fixed by the probate court, with security to be approved by the probate court, and conditioned as hereinafter provided.

SEC. 44. (V.) If the judgment or decision of the probate court shall be for the payment of money, the appeal-bond shall be in double the amount of such judgment and costs, and conditioned for the payment of whatever judgment may be rendered against the appellant in such action by the district court, and all costs which have accrued or may accrue in such action. If the judgment or decision of the probate court shall not be for the payment of money, the appeal-bond shall be in such sum as the probate court shall deem sufficient and may require, and conditioned that the appellant will abide, fulfil and perform whatever judgment may be rendered against him in that action by the district court, and for the payment of all damages which the opposite party may sustain by reason of such appeal, and the delay incident thereto, and for the payment of costs.

SEC. 45. (VI.) The plaintiff in the probate court shall be plaintiff in the district court, and the trial of causes appealed from probate courts in district courts shall be *de novo*, and shall be conducted in the same manner as if such cases had originally been brought in such district courts: *Provided*, That no exception shall be taken or allowed, to the form of the process issued from the probate court, or the manner of serving the same, if the party or parties taking such exception entered his, her or their appearance in the probate court.

SEC. 46. (VII.) Appeals from the judgments and decisions of the probate courts to district courts shall be prayed for within three days after the entry of the judgment or decision from which the appeal is taken, and it shall not be necessary in any action, suit or proceeding, appealed to the district court, to summon the appellee or appellees to appear in such district court, but such appellee or appellees shall be taken and held to have notice of such appeal, in the same manner as he or they had notice of the pendency of the suit in the probate court: *Provided*, That no cause appealed as aforesaid shall be tried at any term of the district court, unless the papers in such cause shall have been filed in such court at least ten days prior to such term, except the parties shall consent to proceed to trial.

SEC. 47. (VIII.) Appeals and writs of error shall be allowed and may be taken from the final judgment and decision of the district courts rendered in actions appealed from probate courts, to the supreme court, as in other cases.

SEC. 48. (IX.) The judges of the probate courts in the several counties in this territory, in their respective counties, shall have power to grant writs of injunction in all cases, in like manner, and with the same effect as now provided by law respecting the granting of writs of injunction by the judges of district courts, but they shall not have power to dissolve such injunctions except in cases where the cause may be pending in the probate court, as provided in section two of this act.

SEC. 49. (X.) It shall be lawful for the probate judges in the several counties to perform the duties imposed by the act to which this act is amendatory upon county clerks, whenever they shall elect so to do, and they shall receive the same fees for performing such duties as are provided to be paid county clerks for the same.

SEC. 50. (XI.) Whenever the probate judge shall perform the duties of clerk of his court, all process issued from such court shall be issued by and in the name of the judge thereof.

SEC. 51. (XII.) The provisions of this act, and of the act to which this act is amendatory, as the same are modified by this act, so far as the same relate to probate courts, shall be and the same are hereby extended to, and declared to be operative within, the county of Arapahoe.

SEC. 52. (XIII.) That section fourteen, and all other parts and portions of the act to which this act is amendatory, which are in conflict with the provisions of this act, and section five of an act entitled An act supplementary to an act entitled an act to divide the territory of Colorado into judicial districts, and to provide for the time of holding courts in the same, approved March 5th, 1864, and all acts and parts of acts, in conflict with this act, be and the same are hereby repealed.

SEC. 53. (XIV.) This act shall take effect and be in force from and after the passage thereof.

An act amendatory of An act regulating the Mode of Proceeding in Replevin. Approved March the 3d, 1864.

[*Approved February* 8, 1865. *Laws* 1865, *p.* 100.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 54. (I.) That in those counties in which the jurisdiction of justices of the peace has been, or shall hereafter be, extended so as to authorize actions to be brought before such justices, where the amount in controversy does not exceed three hundred dollars, justices of the peace shall have jurisdiction in all actions of replevin, where the value of the property in controversy does not exceed the sum of three hundred dollars.

SEC. 55. (II.) That in those counties in which the jurisdiction of probate courts has been or shall hereafter be extended so as to authorize actions to be brought in such probate courts where the amount in controversy does not exceed two thousand dollars, probate courts shall have jurisdiction in actions of replevin, where the value of the property in controversy does not exceed two thousand dollars.

SEC. 56. (III.) All acts and parts of acts conflicting with this act are hereby repealed.

CHAPTER LXXII.

PUBLIC LANDS.

SECTION

1. Paramount right of United States to dispose of soil of this territory conceded; right of citizens to occupy and possess the same under the local laws, to be respected in all courts.
2. Right of occupancy, etc., how manifested.
3. Improvement on public land may be sold on execution; sale of such improvement a valid consideration.

SECTION

4. Rights of occupancy existing heretofore, by what law governed.
5. Declaration of occupant, form of.
6. Record of deed, declaration, etc., referred to in third and fifth sections, to be evidence

SECTION

of its regularity; burden of proving its irregularity, under the local law, to be upon party objecting.

7. Declaration of occupant, as set forth in section five, not to include gold or silver lodes, or diggings.
8. Any occupant of public lands may maintain trespass, ejectment, etc., for injuries to his possession.
9. On trial, possession of plaintiff deemed to extend to boundaries of claim, not exceeding one hundred and sixty acres.
10. Claims to be marked out, so that boundaries may be readily traced; what occupancy sufficient to entitle party to maintain action.
11. What considered an abandonment of claim.
12. Person having title to occupy mining-claims, etc., may maintain the actions mentioned in section eight; citizens of mining-district may declare an abandonment of district a forfeiture of rights of party claiming.

SECTION

13. Title to any lands, lots, or lodes remaining in the United States, not to bar action; this act void as against the United States.
14. Sections ten and eleven applicable only to pastoral and arable lands.
15. Person desiring to mine on claim held for pastoral or arable agriculture, etc., may be required to give bond in double value of improvements, and with sureties to be approved by justice of peace, conditioned for payment of all damages.
16. Justice may hear testimony touching value of improvements.
17. To require sureties to justify.
18. Claimant may demand of miner his damages weekly.
19. Purchaser at public sale of lands dedicated to public uses, to pay for improvements thereon.
20. If parties cannot agree as to value, same recoverable by action of *assumpsit*, in district court.
21. Purchaser to have immediate possession.

SECTION 1. Conceding to the United States of America the primary and paramount right to dispose of the soil of this territory, according to the laws existing or to be enacted by congress, and full and complete exemption from every form of taxation of their property, it is hereby declared, that as between all the good citizens now residing in, or who shall hereafter come to reside in this territory, and as between them, or any of them, and others, having or claiming, or now or hereafter pretending to have or claim, any right to occupy, possess, and enjoy any portion of the public domain situate within the boundaries of this territory, and as between each and every of them, and all other persons, associations, corporations and powers, except the government of the United States of America, the right as the same may exist under the local laws, to occupy, possess, and enjoy any tract or portion thereof, shall be respected in law and equity in all the courts and tribunals of this territory.

SEC. 2. All rights of occupancy, possession and enjoyment of any tract or portion of the said public domain, except mining claims, acquired after the adoption of this chapter, shall be expressed and described in a declaration, in cases of original occupation, and by a deed in cases of purchase, duly acknowledged by some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the land is situated.

SEC. 3. The owner of every claim or improvement, on every tract or parcel of land, has a transferable interest therein, which may be sold in execution or otherwise; and any sale of such improvement is a sufficient consideration to sustain a promise.

SEC. 4. All rights of occupancy, possession and enjoyment of any tract or portion of the said public domain acquired before the seventh day of November, A. D. 1861, shall be ascertained, adjudged and determined by the local law of the district or precinct in which such tract is situated, as it existed on the day when such rights were acquired, or as it thereafter may have existed; and if there were no local laws at that time, then by the common custom then prevailing in respect to such property in the district or precinct in which it existed. All such rights of occupancy, possession and enjoyment, acquired since the said seventh day of November, A. D. 1861, shall be ascertained, adjudged and determined by the laws of this territory in force at the date of such acquisition.

SEC. 5. The declaration of an occupant of a tract or portion of the public domain, required by the second section of this chapter, shall be substantially in the following form: To all whom these presents may concern: Know ye, that I, A. B., of ——, in the county of ——, in the territory of Colorado, do hereby declare and publish, as a legal notice to all the world, that I have a valid right to the occupation, possession, and enjoyment of all and singular that tract or parcel of land, not exceeding one hundred and sixty acres, situate, lying and being in the township of ——, in the county of ——, in the territory of Colorado, bounded and described as follows: (here insert the description,) together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining. Witness my hand and seal, this —— day of ——, in the year one thousand eight hundred and sixty ——. (To be subscribed with the full christian and surname of the person making the application, and acknowledged in the same manner as a deed of real estate.)

SEC. 6. In all legal or equitable proceedings hereafter instituted in any court in this territory, the record of any declaration, deed or mortgage, or other muniments of right, referred to in the third and fifth sections of this chapter, shall be received, except as against the United States; and all persons claiming under the United States, as presumptive evidence of the regularity of the paper itself, under the local law or custom existing at the time of its execution; and if the regularity thereof shall be challenged, the burden of proving the alleged irregularity shall rest upon the party making the challenge.

SEC. 7. The declaration of every occupant of any tract or portion of the public domain, mentioned in section five of this chapter, shall not be construed to include any gold-bearing quartz lodes, silver lodes or gold diggings; but said lodes and diggings shall be excepted from the tract of said occupant, and shall be subject to be occupied, possessed and enjoyed as hereinafter provided.

SEC. 8. Any person settled upon any of the public lands belonging to the United States, may maintain trespass *quare clausum fregit*, trespass, ejectment, forcible entry and detainer, unlawful detainer, and forcible detainer, for injuries done to the possession thereof.

SEC. 9. On the trial of any such cause, the possession or possessory right of the plaintiff shall be considered as extending to the boundaries embraced by the claim of such plaintiff, so as to enable him to have and maintain either of the aforesaid actions, without being compelled to prove an actual inclosure: *Provided*, That each claim shall not exceed in any case one hundred and sixty acres of land.

SEC. 10. Every such claim to entitle the holder to maintain either of the aforesaid actions, shall be marked out, so that the boundaries thereof may be readily traced, and the extent of such claim easily known; and no person shall be entitled to maintain either of said actions for possession of, or injury done to, any claim, unless he occupy the same, or shall have made improvements thereon to the value of one hundred dollars.

SEC. 11. A neglect to occupy such claim, or to inclose at least five acres with a reasonable fence, or plough at least five acres of the same, for the period of six months, shall be considered such an abandonment as to preclude the claimant from maintaining either of the aforesaid actions.

SEC. 12. Any person who may have a title to occupy any lot or lots within any city or village plot, or any lots or mining claim within any mining district, in this territory, in virtue of a certificate, deed of gift or purchase from the original claimant or claimants or their assigns, as well as all purchasers, under any decree or execution of any of the so-called provisional government courts, people's or miners' courts, of the lands situate within any city or village plot, or any lots, lands or mining-claims situate within any mining-district, together with the original claimant or claimants of said lots, lands, or mining-claims, shall be entitled to maintain the actions, authorized by the eighth section of this chapter, against any and all persons who shall enter upon and occupy said lots, lands, or mining-claims, or any of them: *Provided*, It shall be lawful for the citizens of any mining-district, to declare an abandonment of any creek, river, gulch, bank, or mining-claim, a forfeiture of the rights of the claimants thereto; in which case, the parties claimant shall not be enabled to maintain either of the actions, mentioned in section eight of this chapter.

SEC. 13. Nothing in this chapter contained shall be construed to deny the right of the United States to dispose of any lands in this territory; nor shall the fact, that the title to any lots, lands, lodes or mining-claims, hath not passed from the United States, be any bar to the recovery of the plaintiff in either of the actions specified in section eight of this chapter. As against the United States, and all persons holding any of said lands under the United States, or the laws thereof, this chapter shall be of non-effect and void.

SEC. 14. Sections ten and eleven of this chapter, are not intended, and shall not be construed, to affect or apply to mining-claims; but shall affect and be applicable to claims held or used for arable or pastoral agriculture only.

SEC. 15. Whenever any improvements may be made upon any claim held or used for arable or pastoral agriculture, or upon any building-lot, mill-site, or other lot or premises, and any person or persons shall demand of the claimant thereof to mine any portion of said claim, upon which such improvements may have been made, it shall be lawful for the occupant or holder of such claim to require a good and sufficient bond, in a sum double the value of the improvements upon the land sought to be mined, from the party or parties demanding to mine upon such claim, with two or more sureties, to be approved by any justice of the peace of the township in which the claim is situate, conditioned that the said party or parties shall pay all damage which may be sustained by the occupant or holder of such claim, to the improvements thereon.

SEC. 16. It shall be the duty of the said justice of the peace, by whom the bond is required to be approved, as is above recited, in case the value of the improvements cannot be agreed upon by the claimant and the party or parties seeking to mine, to appoint a day and hour to hear testimony respecting the value of the improvements which may be damaged by reason of such mining.

SEC. 17- It shall be the duty of the justice to require the sureties entering into such bond as is above required, to justify before him, each in the sum stated in said bond; and if the claimant shall except to the said sureties, or either of them, it shall be lawful for said justice, and he is hereby required to examine said surety or sureties excepted to, on oath, touching the sufficiency of said surety or sureties; and if the justice shall find either or both of said sureties insufficient, it shall be the duty of the justice to require further sufficient surety or sureties, which shall be likewise approved, and shall justify, as is above required.

SEC. 18. It shall be competent for said claimant to demand from the obligees in said bond, at any time after one week after mining shall be commenced on said claim, such sum as may be equal to the damage done the improvements thereon, and after every week it shall be competent for said claimant to make the like demand, unless the payment of the damage done or to be done said improvements, shall, by the claimant, be postponed for a longer time.

An act in regard to Improvements upon Public Lands Donated to Public Uses.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 19. (I.) That when any person hath heretofore, or shall hereafter, settle upon and improve any of the public lands which have been, or shall hereafter be, donated by act of congress to public uses, for educational or other purposes, and upon any sale of such lands by public authority, subsequent to such settlement and improvement, if the person settling upon such lands shall not become the purchaser, the person becoming the purchaser of such lands shall pay to such settler the reasonable value of his improvements thereon.

SEC. 20. (II.) Whenever the parties cannot agree as to the reasonable value of such improvements, the same shall be recoverable by an action of *assumpsit* in the district court of the proper county.

SEC. 21. (III.) Nothing herein contained shall be construed to interfere with the right of the purchaser of any such lands to the immediate possession thereof, upon the completion of his purchase.

Prior Statutes Repealed. An act declaratory of the rights of occupants of the Public Domain, except as against the United States. Approved November 7, 1861. Laws 1861, p. 168.

An act concerning actions by persons holding Lots, Lands, or Mining-Claims, except as against the United States. Approved November 1, 1861. Laws 1861, p. 249.

An act to protect the rights of persons settled upon the Public Lands of Colorado Territory. Approved August 16, 1862. Laws 1862, p. 91.

CHAPTER LXXIII.

QUO WARRANTO.

SECTION
1. District attorney, with leave of court, may exhibit an information in nature of a *quo warranto*, against any person usurping or intruding into any office or franchise; may be exhibited against several persons when; defendants to appear and plead at same term.
2. In case district attorney neglects or refuses, relator may exhibit such information.

SECTION
3. In case defendant found guilty of usurping, court to give judgment of ouster; to impose a fine; and to give judgment for costs; if judgment for defendant, relator to pay costs.
4. Court may allow relator and defendant reasonable time to plead.
5. Allowance of appeals and writs of error; effect of.

SECTION 1. In case any person or persons shall usurp, intrude into, or unlawfully hold or execute, any office or franchise,[1] it shall and may be lawful for the district attorney of the proper district, with the leave of the district court,[2] to exhibit to such court an information in the nature of a *quo warranto*, at the relation of any person or persons desiring to sue or prosecute the same, who shall be mentioned in such information as the relator or relators, against such person or persons so usurping, intruding into, or unlawfully holding or executing any such office or franchise, and to proceed therein in such manner as is usual in cases of information in the nature of *quo warranto*; if it shall appear to said court that the several rights of divers persons to the same office or franchise may properly be determined on one information, it shall and may be lawful for the said court to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons, against whom such information in the nature of a *quo warranto* shall be sued or prosecuted, shall appear and plead as of the same term in which the said information shall be filed, unless the court shall give further time to such person against whom such information shall be exhibited, to plead; such person or persons who shall sue or prosecute such information, shall proceed thereupon with the most convenient speed that may be.

SEC. 2. In case the district attorney shall neglect or refuse to exhibit such information when requested, then any of the relators may exhibit such information.[3]

SEC. 3. In case any person or persons against whom any information in the nature of a *quo warranto* shall, in any of the said cases, be exhibited as aforesaid, shall be found or adjudged guilty of any usurpation or intrusion into, or unlawfully holding and executing any office or franchise as aforesaid, it shall and may be lawful for the said courts as well to give judgment of ouster against such person or persons, of and from any of

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(1) The information in the nature of a *quo warranto* is a criminal proceeding, and can be resorted to, only where the public have an interest in the office or franchise. *Donnelly* v. *The People*, 11 Ill. 552.

It will not lie for usurping a franchise of a private nature. *The People ex rel.* v. *Ridgley*, 21 Ill. 66.

(2) Acquiescence in the proceeding, by the defendant, is equivalent to formal leave. *Dickson* v. *The People*, 17 Ill. 191.

(3) It is only in case the district attorney refuses to file any information, or where that officer so proceeds as to indicate hostility to the right of the relator, or on leave granted by the court under special circumstances, that the relator will be permitted to assume control of the proceeding. *Bashford* v. *Barstow*, Sup. Court Wisconsin, Jan. T., 1856.

Where an information was presented to the attorney-general, and he was requested to file the same, but refused so to do, and afterwards filed his own information, different from that presented to him, but sufficient in form and substance, a subsequent motion by the relator, based upon affidavit of these facts, to dismiss the information filed by the attorney-general, and for leave to file and prosecute his own information was overruled. *Ibid.*

As to form and requisites of the information, see 21 Ill. 65. 11 Ill. 552. *The People* v. *M. & A. R. R. Co.* 13 Ill. 67. *Wight* v. *The People*, 15 Ill. 417. *The People* v. *Higgins*, 15 Ill. 110.

As to the plea of the defendant, see *Clark* v. *The People*, 15 Ill. 217. *The People* v. *Percells*, 3 Gilm. 63.

the offices, or franchises, as to fine such person or persons respectively, for his or their usurping, intruding into, or unlawfully holding and executing, any such office or franchise; and also to give judgment that the relator or relators in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they for whom such judgment shall be given, shall recover his or their costs, therein expended, against such relator or relators.

SEC. 4. It shall be lawful for the court in which any information as aforesaid shall be exhibited, to allow to the relator or relators, and the defendant or defendants, such convenient time to plead, reply, rejoin or demur as to said court shall seem reasonable and just.

SEC. 5. Appeals may be taken from the decision of the district court, upon such terms as the said district court shall prescribe, or writs of error may be prosecuted, whenever the supreme court, or any of the judges thereof, in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing such writs; the said supreme court, or judge in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error as to the said court or judge may seem reasonable and just. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the district court, until the determination of such writ of error.

Prior Statutes Repealed. An act concerning Proceedings in Cases of *Quo Warranto.* Approved November 7, 1861. Laws 1861, p. 351.

CHAPTER LXXIV.

REPLEVIN.

SECTION
1. In what cases the action lies.
2. Not for goods seized under execution or attachment, unless exempt by law; nor by any person not having the right to reduce same to possession.
3. Oath.
4. Summons; sheriff to return bond.
5. Oath where made by third person.
6. Plaintiff to give bond to officer; condition.
7. Penalty for failure by officer to take sufficient bond.
8. Action on bond.
9. If goods not found, summons to be served on defendant.

SECTION
10. In such case plaintiff may proceed as in trover.
11. Judgment for plaintiff.
12. Judgment for defendant.
13. Execution.
14. In action on bond, defendant may plead that merits of action were not determined in the action of replevin; *proviso.*
15. Publication of notice to non-resident defendants, and defendants not found.
16. Proceedings before justice of peace, and probate judge.
17. Such proceedings where not otherwise specified, regulated by act concerning justices of the peace.

SECTION 1. Whenever any goods or chattels shall have been wrongfully distrained, or otherwise wrongfully taken, or shall be wrongfully detained, an action of replevin may be brought for the recovery of such goods or chattels, by the owner or person entitled to their possession.[1]

SEC. 2. No action of replevin shall lie at the suit of the defendant, in any execution or attachment, to recover goods or chattels seized by virtue thereof, unless such goods and chattels are exempted by law from execution or attachment; nor shall an action of replevin lie for such goods and chattels, at the suit of any other person, unless he shall, at the time, have a right to reduce into his possession the goods taken.

SEC. 3. The person or persons bringing such action, or some one on his, her, or their behalf, shall, before any writ shall issue, make oath or affirmation before the clerk of the district court, or any justice of the peace of the proper county, that the plaintiff in such action is the owner of the property described in the writ, and about to be replevied, or that he is then lawfully entitled to the possession thereof, and that the same has not been taken for any tax, assessment, or fine, levied by virtue of any law of this territory, nor seized under any execution or attachment against the goods and chattels of such plaintiff, liable to execution or attachment.[2]

SEC. 4. The proceedings in an action of replevin shall be commenced by the filing of said affidavit; whereupon a summons shall issue to the defendant, in which shall be stated a description of the property to be replevied, and the sheriff shall return the bond by him taken, together with the writ, to the clerk, who shall file the same.

SEC. 5. When the oath required in section three is made by another, in behalf of the claimant, it shall be sufficient to state that he believes the facts stated in such affidavit to be true.

SEC. 6. Before the execution of any writ of replevin, the party suing out such writ shall give bond to the officer having such writ, with good and sufficient security, in double the value of the property about to be replevied, conditioned to prosecute such suit with effect, and without delay, and make return of the property, if return thereof should be awarded, and to pay all damages which may be adjudged against him for the detention thereof, and to save and keep harmless such officer in replevying such property; and such officer shall thereupon

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(1) As to when the action will lie. See Breese, 172. 3 Scam. 565. 3 Scam. 582. 4 Scam. 107. 14 Ill. 467. 13 Ill. 192. 18 Ill. 286. 16 Ill. 149. 20 Ill. 189. 37 Ill. 281. 35 Ill. 222. 34 Ill. 436. 34 Ill. 74. 34 Ill. 482. 20 Ill. 429. 21 Ill. 526. 32 Ill. 348. 26 Ill. 488.

As to where a demand of possession by plaintiff is necessary. See 4 Scam. 449. 2 Gilm. 344. 13 Ill. 317.

By whom demand may be made, where necessary. *Newman* v. *Bennett*, 23 Ill. 427.

(2) As to the requisites of the affidavit, see *Campbell* v. *Head*, 13 Ill. 124. *Whisler* v. *Roberts*, 19 Ill. 274. 20 Ill. 189.

serve the writ, and deliver the property to the party suing out such writ.

SEC. 7. If the officer serving any writ of replevin shall fail to take and return a bond as required by the preceding section, or shall return an insufficient bond, such officer shall pay to the party injured, all damages which he may sustain by reason of such neglect; to be recovered by an action on the case, or by action of debt against such officer and his securities upon his official bond.

SEC. 8. If at any time the condition of any such bond, as required by section six, be broken, the officer to whom such bond was executed, or the defendant in the action of replevin, in the name of such officer, to his own use, may maintain an action on such bond, for the recovery of such damages as may have been sustained by reason of the breach of such condition.

SEC. 9. Whenever in any action of replevin the goods and chattels specified in the writ of replevin to be replevied, cannot be found by the officer having such writ, or shall not have been delivered to the officer, the defendant shall be summoned by virtue of such writ, by the officer reading the same to him, to appear and answer to the plaintiff's action for the recovery of the value of such property; such reading of the writ to have the same force and effect as the service of summons in other actions.

SEC. 10. In such action of replevin, in case the property named in such writ shall not be found or replevied, or shall not have been delivered as aforesaid, the plaintiff may file his declaration in trover; and the cause shall be heard and determined as other actions of trover.[3]

SEC. 11. If the goods and chattels specified in the writ of replevin shall have been replevied and delivered to the plaintiff, and such plaintiff shall recover judgment in the action, he shall recover damages for the detention of the property, while in the possession of the defendant; and shall also have judgment that he retain possession of such property. If such property shall not have been replevied and delivered to the plaintiff, such plaintiff, if he shall recover, shall be entitled to judgment and execution for the value of such property, or his interest therein, and such damages as he shall have sustained by reason of the wrongful taking or detention thereof, together with costs of suit.[4]

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(3) The plaintiff, in case a part of the goods are not found, may proceed in trover as to that part. *Dart* v. *Horn*, 20 Ill. 212.

As to the rule of damage; in such case, see *McGavock* v. *Chamberlain*, 20 Ill. 220.

(4) The plaintiff may recover as damages the value of the use of the property while detained by the defendant; but not for the natural depreciation in value of the same while in defendant's possession. *Odell* v. *Hole*, 25 Ill. 204.

It may be otherwise as to property held only for sale. *Ibid.*

And the plaintiff may recover for a depreciation occasioned by the abuse or want of reasonable care, of the defendant. *Ibid.*

Sec. 12. If the goods and chattels specified in the writ of replevin shall have been replevied and delivered to the plaintiff, and such plaintiff shall fail to prosecute his suit with effect and without delay, or shall dismiss his suit, or suffer a non-suit or discontinuance, or if the right of property, or to the possession thereof shall be adjudged against him, the court, justice of the peace, or probate judge shall give judgment for a return of the property taken, to the defendant, and damages for the use of property, from the time it was taken until the return thereof shall be adjudged, and also for the costs of suit.[5] If such property shall not have been replevied and delivered to the plaintiff, and such plaintiff shall fail to prosecute his suit as aforesaid, or shall dismiss his suit, suffer a non-suit or discontinuance, or the right of property or the possession thereof shall be adjudged against him, the defendant shall recover his costs.[6]

Sec. 13. In all actions of replevin, the party entitled thereto, shall have execution upon the judgment rendered in the action, conformably thereto, and the officer to whom such execution shall be directed and delivered, shall proceed in the same manner to collect any moneys directed to be collected upon such execution, as upon executions against property in personal actions; and when such execution shall direct the officer to replevy any property and deliver the same to the party in whose favor the same shall be issued, such officer shall possess the same powers in respect to replevying the property described in such execution, as now provided by law, upon the execution of writs of replevin.

Sec. 14. In any action upon any bond given as required by the provisions of this chapter, where the merits of the case have not been determined in the action of replevin in which such bond was given, the defendants may plead such fact, and also their title, or the title of any one or more of them to the property in dispute in such action of replevin, except in cases where the plaintiff in such action of replevin, shall have voluntarily dismissed his suit or submitted to a non-suit therein.[7]

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(5) The pleas of *non cepit*, and *non detinet* do not put in issue the property in the chattels in question. *Anderson* v. *Talcott*, 1 Gilm. 371. *Johnson* v. *Howe*, 2 Gilm. 342. *Vose* v. *Hart*, 12 Ill. 378. *Wells* v. *McClenning*, 23 Ill. 409.

If, after the property is replevied, the defendant seizes and converts the same, this may be pleaded by the plaintiff; and in such case the defendant, prevailing, will not have a judgement of *retorno*. *Buckmaster* v. *Beames*, 4 Gilm. 443.

(6) Where the verdict is for the plaintiff as to a part of the property, and for the defendant as to the residue, each party recovers costs. *Lansing* v. *Bates*, 11 Ill. 551. Citing *Powell* v. *Hinsdale*, 5 Mass. 343. *Clark* v. *Keith*, 9 Ohio, 343. *Browne* v. *Smith*, 1 N. H. 36.

(7) The statute has no application in the assessment of damages in the action of replevin. 13 Ill. 126.

The plea of the defendant, desiring to avail himself of the provisions of this section, must set forth enough of the proceedings in the action of replevin, to enable the court to decide upon the face of the plea, that the right of property has not been already determined. *King* v. *Ramsay*, 13 Ill. 622.

The defendant in an action of replevin pleaded *non detinet*, property in himself, property in the

SEC. 15. Whenever a plaintiff in any action of replevin pending in any court of record in this territory, shall file an affidavit, as provided in the eighth section of the chapter concerning practice in chancery, the clerk shall cause publication to be made as provided in said section of said chapter, and after such publication shall be made, the cause shall proceed in the same manner as if the defendant had been personally served with process; and when the case has been commenced in the justice of the peace or probate courts, and it shall appear upon the return of the writ that the defendant has not been personally served, and no appearance be entered for him, the justice or probate court shall continue the case ten days, and immediately cause a notice to be posted in three of the most public places in the neighborhood of said justice, as in cases (or as near as may be) of attachment against non-resident defendants before justices of the peace.

SEC. 16. In all actions of replevin brought before a justice of the peace, or probate judge, the writ of replevin may be issued, directed to any constable of the county in which such action may be brought, and any constable to whom such writ may be delivered, is hereby empowered, authorized and required to receive and approve all bonds, and in all things to execute such writ of replevin in the manner prescribed by this chapter, and to perform all acts in executing such writ, as are or may be required of sheriffs in this territory in executing writs of replevin.

SEC. 17. In all actions of replevin brought before justices of the peace, the proceedings shall be regulated by this chapter; and in matters not mentioned herein, such proceedings shall be regulated by the chapter concerning justices of the peace and constables, and the amendments thereto.

plaintiff; judgment for defendant. In a subsequent action upon the bond, the defendant in that action was permitted to plead, and show, in mitigation of damages, that only the right to the present possession of the goods was in issue in the replevin suit; that the right of property therein was not determined, and that he himself was the owner of the goods. *Warner* v. *Mathews*, 18 Ill. 83.

Prior Statutes Repealed. An act regulating the mode of proceeding in replevin. Approved October 24, 1861. Laws 1861 p. 191.

An act to amend an act entitled An act regulating the mode of proceeding in replevin. Approved March 3, 1864. Laws 1864, p. 121.

An act amendatory of An act regulating the mode of proceeding in replevin. Approved February 8, 1864. Laws 1864, p. 100.

CHAPTER LXXV.

REVENUE.

SECTION
1. Amount and rate of taxes to be collected annually.
2. Exemptions.
3. All other property liable to taxation; what esteemed real property.
4. The term "credit" defined.
5. Who shall list property for taxation.
6. Commission merchants deemed owners of property in their possession, where owner is a non-resident.
7. In what county personal property shall be listed.
8. Person listing property of another shall list it in the same county as if it were his own; but separately from his own; estates of deceased persons may be listed as belonging to heirs of decedent.
9. Property of corporations how and where listed.
10. Personal property of persons doing business in several counties, where listed; individuals of partnership liable for the taxes due from firm.
11. Insurance companies to pay a tax; agent liable therefor.
12. Taxable property to be listed each year; how valued.
13. Depreciated bank-notes, stock in corporations, credits and annuities how valued.
14. In listing credits, party may deduct therefrom amount of debts *bona fide* due from him; no acknowledgment of a debt not founded on actual consideration to be deducted; debt as security, deducted; how in case of several securities; debt due for a premium of insurance, or for unpaid subscription to any society, or for stock in any corporation, not a debt.
15. Who deemed a merchant; how to list stock of merchandise.
16. Who deemed a manufacturer; to list average value of stock, including materials only.
17. Assessor to notify tax-payers of his county to return list of taxable property.
18. List, what to contain.
19. County census board may vary list of items; county census board, of whom to consist.
20. Commissioners to furnish assessor with suitable blanks for assessment, and instructions.
21. List to be sworn to.
22. If list not furnished, assessor may list property; may examine witnesses on oath; penalty for refusal to testify in such case.
23. Assessor to indorse list, and file in alphabetical order and return same to county clerk's office.
24. All property to be valued by assessor except that herein required to be valued by owner.
25. Assessor to deliver assessment-roll to the county clerk.
26. To attach an affidavit to assessment-roll.
27. County clerk and treasurer constitute board of correction; when to sit; powers in correction of assessments.
28. County clerk to return abstract of assessment to auditor.
29. Territorial census board; of whom to consist; when to sit; powers; is authorized to equalize assessments on real estate in the various counties.
30. Such equalization how made.
31. Auditor to transmit rate of territorial tax to county clerk of each county, not to exceed three mills on dollar; if no different rate fixed, this rate to be inserted by county clerk in tax-list; penalty.
32. County commissioners to levy taxes, when.
33. As soon as practicable, after levy of taxes, clerk to make tax-list; form thereof.
34. To attach thereto a warrant requiring treasurer to collect same.
35. Treasurer to attend at his office during September to receive taxes; to collect all taxes except delinquent tax, and return territorial tax to territorial treasurer by the 15th of December.
36. Auditor's warrants receivable for territorial tax; county warrants for county tax, poor-tax, or poor-house tax; money only receivable for school-tax; road-tax may be paid in road warrants.
37. Treasurer to cancel warrants received for taxes; in case warrant exceeds tax, to give a certificate for balance due.
38. Certain errors in assessment-list may be corrected by treasurer.
39. No demand for taxes necessary.
40. Sale of personal property distrained for taxes, how made.
41. Treasurer, if resisted, may call upon any person to assist him; penalty for refusal; party so resisting treasurer liable as if resisting sheriff in the execution of civil process.
42. On December first unpaid taxes of preceding year become delinquent; to draw twenty-five per cent. interest; taxes on real estate a perpetual lien.
43. Before June first, in each year, treasurer to offer for sale at public auction, lands on which taxes of preceding year are unpaid.
44. Treasurer to continue to receive taxes after same delinquent.
45. Treasurer to give notice of sale.
46. Sale to take place between nine a. m. and five p. m.; may be adjourned from day to day.
47. Treasurer to make return of sale to July term of board of county commissioners.
48. Person offering to pay tax for smallest part of tract, reckoned highest bidder; how such part to be taken and set off.
49. If party bidding fail to pay amount due, treasurer may sell again; notice; or may recover the amount bid by action.
50. Treasurer to issue certificate to purchaser.
51. Certificate assignable by indorsement.
52. Redemption of real estate sold hereunder.
53. Treasurer to make certificate of redemption.
54. After expiration of two years from sale, treasurer to make deed of lands so sold and unredeemed.
55. Form of deed.
56. If lands sold in error, county to make good amount of sale to purchaser; treasurer liable therefor to county.
57. Treasurer to make settlement with county commissioners; clerk to transmit statement of territorial revenue to auditor; penalty for failure of county treasurer to pay over balance to territorial treasurer.
58. Where in any county no county organization exists, and in certain other cases, the census board may appoint an assessor to make assessment in such county; auditor to deliver to assessor so appointed, assessment-rolls; assessor so appointed to exercise all powers of county assessor.
59. Assessor to return assessment-roll to auditor without delay.
60. On return of assessment-roll, auditor to give notice of time and place of hearing objections.
61. Powers of auditor in making corrections; to indorse his approval.
62. Auditor to issue tax-list to collector; collector to be appointed by census board at time of appointment of assessor; form of tax-list; territorial tax and percentage sufficient to cover expense of assessment; collector to have same powers as county treasurer; collector so appointed to exhibit accounts for settlement, when; auditor to

SECTION
audit same; report amount due to treasurer; collector to pay over balance to territorial treasurer.
63. In case of taxes upon lands becoming delinquent, collector to make sale of such lands; when and where.
64. If no bidders, lands to be struck off to territory.
65. Collector to issue certificate of purchase; fees of collector for certificate.
66. Certificate assignable.
67. Collector to make return of sale to territorial treasurer.
68. Redemption of lands sold; in case redemption be not made, treasurer to execute deed.
69. In case of death, resignation, etc., of collector, auditor to appoint successor.
70. The same person may be appointed assessor and collector; qualification; auditor to fix penalty of bond and approve security.
71. Penalty for default or misfeasance.
72. Purchaser may have all tracts purchased by him inserted in certificate or tax-deed.
73. Salary and compensation of assessor and collector.
74. In counties which have paid no territorial tax for 1867, and made no provision for collection of tax in 1868, secretary to appoint collector and assessor for such county, to assess and collect tax, and sufficient county tax to defray expense of such collection.
75. Such assessor and collector to qualify, and receive same compensation, and perform duties in same manner and at same time as county assessors and collectors.

SECTION
76. Territorial tax levied for 1867 and 1868, in such counties, three mills on the dollar; county tax of two mills; valuation for 1867, how determined.
77. Territorial tax of 1867, in such counties, making provision for collection of tax in 1868, to be collected by county collector.
78. County tax, hereby authorized, after deducting expense of assessment and collection to remain in hands of collector until disposed by county commissioners.
79. In assessment for year 1867, property of non-residents for said year not to be included.
80. In case any county shall hereafter fail to provide for collection of territorial revenue, same to be collected in the manner herein provided.
81. Amendment of section two of the third article of the act to establish the treasury department.
82. No expense of collecting any tax to be paid by the territory.
83. Every county officer before proceeding to the duties of his office, shall furnish his signature, commencement and expiration of term of office, and post-office address, to the county clerk, who shall forward same to secretary of territory.
84. Secretary, prior to any general election, to furnish county clerks blanks for the reports specified in preceding section.
85. Conflicting acts repealed.
86. Territorial tax of five mills on the dollar.
87. Prior inconsistent acts repealed.
88. This act in force from its passage.

SECTION 1. There shall be levied and assessed, upon the taxable real and personal property, within this territory, in each year, the following taxes, as hereinafter provided: For territorial revenue, three mills on a dollar, when no rate is directed by the census board.[1] For the support of lunatic paupers, one half mill on a dollar, to be paid into the territorial treasury as other territorial taxes. For ordinary county revenue, including the support of the poor, not more than ten mills on a dollar. For the support of schools, as provided in the chapter concerning schools. For the maintenance of roads, as provided in the chapter concerning roads.

SEC. 2. The following classes of property are not to be taxed, and shall be omitted from the list herein required: *First*, The property of the United States and that of this territory, including the university and school lands. *Second*, The property of a county, township, incorporated town and school districts, when devoted to the public use, and not held for pecuniary profit. *Third*, Public grounds, by whomsoever donated to the public, including all places for the burial of the dead. *Fourth*, Fire implements and engines, used for extinguishing fires, with the grounds used exclusively for their buildings and for the meetings of fire companies. *Fifth*, The grounds and buildings of library, scientific, benevolent, and religious institutions, or societies, devoted solely to the appropriate objects of those institutions, not exceeding three acres in extent, and not leased or otherwise used with a view to pecuniary profit. *Sixth*, The

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(1) Five mills, by the act of January 10, 1868. See § 86 of this chapter.

books, papers, furniture and apparatus, pertaining to the above institutions, and used solely for the purposes above contemplated, and the like property of students in any such institutions, used for their education. *Seventh*, Money and credits, belonging exclusively to such institutions, and devoted solely to sustaining them; but not exceeding in amount or income the sum prescribed by their charter. *Eighth*, Animals not specified in the next section, private libraries, not exceeding one thousand dollars in value, and family pictures, household and kitchen furniture, beds and bedding, wearing apparel in use, wool, flax and tow, intended to be manufactured, with the food provided for each family, not to exceed in all, the value of three hundred dollars. *Ninth*, The polls or estates, or both, of persons who, by reason of age or infirmity, may, in the judgment of the assessor, be unable to contribute to the public charges, such opinion being subject to reversal by the board of county commissioners.

SEC. 3. All other property, real and personal, within the territory, is subject to taxation in the manner herein directed; and this section is intended to embrace lands and lots in towns, including lands bought from the United States and from this territory, and whether bought on a credit or otherwise; buildings or other improvements erected upon land, the title to which still remains in the United States, which for the purposes of taxation shall be considered real estate; ferry franchises, which, for the purposes of this chapter, are to be considered real property; ditches and flumes, horses, oxen, cows and calves, mules and asses, sheep, swine and goats; money in coin or gold-dust, whether in possession or on deposit, and including bank-bills; property or labor due from solvent debtors on contract, or on judgment, and whether within this territory or not; mortgages and other like securities; stock or shares in any bank or company, incorporated or otherwise, and whether incorporated by this or any other territory or state, and whether situate in this territory or not; public stock or loans; household furniture not otherwise exempt, including gold and silver-plate, musical instruments, watches and jewelry; private libraries, for their value over one thousand dollars; pleasure carriages, stages, hacks, and other vehicles for transporting passengers; wagons, carts, drays, sleds, and every other description of vehicle or carriage; boats and vessels, of every description, wherever registered and licensed, and whether navigating the waters of this territory or not, if owned, either wholly or in part, by persons who are inhabitants of this territory; annuities, but not including pensions from the United States, or any of them, nor salaries, nor payments expected for services to be rendered; and all other property not above exempted, although not herein specified.

SEC. 4. The term "credit," as used in this chapter, includes every claim and demand for money, labor, or other valuable thing; and every annuity, or sum of money receivable at stated periods, and all money in property of any kind, and secured by deed, mortgage, or otherwise; but pensions from the United States, or any of them, and salaries or payments expected for services to be rendered, are not included in the above term.

BY WHOM, WHERE, AND IN WHAT MANNER PROPERTY IS TO BE LISTED.

SEC. 5. Every inhabitant of this territory, of full age and sound mind, shall list all property, subject to taxation in this territory, of which he is the owner or has the control or management, in the manner hereinafter directed; but the property of a ward is to be listed by his guardian; of a minor, having no other guardian, by his father, if living; if not, then by his mother, if living; and if not, then by the person having the property in charge; of a married woman, by her husband, but if he be unable or refuses, by herself; of a beneficiary for whom property is held in trust, by the trustee; and the personal property of a decedent, by the executor; of a body corporate, company, society or partnership, by its principal accounting officer, agent or partner; property under mortgage or lease, is to be listed by, and taxed to, the mortgagor or lessor, unless it be listed by the mortgagee or lessee.

SEC. 6. Commission merchants, and all persons trading and dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this territory, are, for the purposes of taxation, to be deemed the owners of the property in their possession.

SEC. 7. All personal property is to be listed, assessed and taxed in the county where the owner resides, on the first of March, of the then current year; but if the owner resides out of the territory, it is to be listed and taxed where it may then be; and if the agent or person having charge of such property neglect to list it, he will be subject to the penalty hereinafter provided.

SEC. 8. A person required to list property in behalf of another, shall list it in the same county in which he would be required to if it were his own, except as herein otherwise directed; but he must list it separately from his own, naming the person or estate to whom it belongs; but the undivided property of a person deceased, belonging to his heirs, may be listed as belonging to such heirs, without enumerating them.

SEC. 9. The property of corporations or companies constructing canals, ditches, flumes, railways, plank roads, graded roads, turnpike roads, and similar improvements, shall be assessed to the company or corporation, and may be ascertained in the best manner within the power of the assessor.

SEC. 10. When a person is doing business in more than one county, the property and credits, existing in any one of the counties, are to be listed and taxed in that county, and credits not existing in nor pertaining especially to the business in any one county, are to be listed and taxed in that where the principal place of busines may be. Each individual of a partnership, is liable for the taxes due from the firm.

SEC. 11. Insurance companies of every description, existing in other territories or states, and operating in this, shall be taxed one per cent., for territorial purposes, upon the amount of the premiums taken by them during the year previous to the listing, in the county where the agent conducts that business; and the agent shall render the list, and shall be personally liable for the tax; and if he refuses to render the list, or to swear as herein required, the amount may be assessed according to the best knowledge and discretion of the assessor.

MANNER OF LISTING AND ASSESSING PROPERTY.

SEC. 12. All taxable property is to be listed and valued each year; and real property is to be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvements in the vicinity, and all other elements of its value.

SEC. 13. Depreciated bank notes, and depreciated stock or shares in corporations or companies, may be listed at their current value and rate; credits shall be listed, at such sum as the person listing them believes will be received, or can be collected; and annuities, at the value which the person listing believes them to be worth in money.

SEC. 14. In making up the amount of money and credits which any person is required to list, he will be entitled to deduct from their gross amount, the amount of all *bona fide* debts owing by him; but no acknowledgments of indebtedness, not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of this section; and so much only of any liability of such person, as security for another, shall be deducted, as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay, on account of the inability of the principal debtor; and if there are other securities able to contribute, then so much only as he, in whose behalf the list is made, will be bound to contribute; but no person will be entitled to a deduction, on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of an unpaid subscription to any institution or society, nor on account of a subscription to, or instalment payable on, the capital stock of any company or incorporation.

SEC. 15. Any person owning, or having in his possession or control, within this territory, with authority to sell the same, any personal property, purchased either in or out of this territory, with a view of being sold at an advance price or profit, or which has been consigned to him from any place out of this territory, for the purpose of being sold within the same, shall be held to be a merchant for the purpose of this chapter. Such property shall be listed for taxation, and in estimating the value thereof, the merchant shall take the average value of such property in his possession or control during the year next previous to the time of listing, and if he have not been engaged in that business so long, then he shall take the average during such time as he may have been so engaged, and if he be commencing, he shall take the value of the property at the time of listing.

SEC. 16. Any person who purchases, receives or holds, personal property of any description, for the purpose of adding to the value thereof by any process of manufacturing, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer, for the purposes of this chapter, and he shall list for taxation, the average value of such property in his hands, estimated as directed in the preceding section; but the value shall be estimated upon the materials only, entering into the combination or manufacture.

SEC. 17. The assessor of each county shall, on or before the first-day of May of each year, leave with each person resident in his county, of full age and sound mind, at the usual place of residence, or at the office or other place of business, of such person, a written or printed notice, requiring him to make out and return to the assessor, by the twentieth day of the same month, a statement or list of his property, which by law is subject to taxation; and the assessor shall leave a blank form, upon which said list may be made. If the statement be not returned to the assessor in due time, he is to call for the same; but if the person is prepared to render his list at the time the notice is left, it is the duty of the assessor to receive it at that time.

SEC. 18. The list shall contain: *First*, His lands, by township, range, section, and any division or part of a section; and where such part is not a congressional division or subdivision, some other description sufficient to identify it; and his town lots, naming the town in which they are situate, and their proper description by number and block, or otherwise, according to the system of numbering in the town. *Second*, His personal property by the following particulars: Amount of capital employed in merchandise. Amount of capital employed in manufactures. Number and value of horses. Number and value of mules and asses. Number and value of oxen. Number and value of sheep. Number and value of swine. Number and value of goats. Number and value of carriages, and vehicles of every description. Amount of money and credits. Amount of clocks, watches, jewelry, gold and silver plate. Number and value of musical instruments. Amount of taxable household furniture. Amount in stock or shares in any corporation or company. Amount of all other property not enumerated. The number of polls.

SEC. 19. The above list of items may be diminished or varied or enlarged by the county census board, which shall consist of the county commissioners, the county clerk and treasurer, so as to obtain such facts as they deem advisable.

SEC. 20. Before the first of May in each year, the county commissioners shall cause to be furnished to the assessor suitable blank forms for the assessments, and such instructions, so as to secure full and uniform assessments and returns.

SEC. 21. The list shall be signed and sworn to by the person making it, and the oath may be administered, either by the assessor, or by any other officer authorized to administer oaths, and shall be certified by him; and the oath may be printed upon the blank forms, and shall be in substance as follows: I, A. B., do solemnly swear that I have listed above (or within) all the land and all the personal property, money and credits, subject to taxation, owned or held by me, and which I am required by law to list, (in the proper cases insert, as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor,) according to the best of my knowledge.

SEC. 22. When any person required to render the above statement, fails so to do, from absence or sickness, or when any such person refuses so to do, or to take or subscribe the oath required, the assessor shall ascertain, according to the best information he can obtain, the number and value of the several species of property required; and to that end, he is hereby authorized to examine, on oath, any person whom he supposes to have knowledge in relation thereto; and if any person refuses to testify, he shall forfeit the sum of five dollars, to be recovered by civil action, in the name and to the use of the county.

SEC. 23. The said statements shall be indorsed with the name of the person whose property is therein listed, and the assessor shall file them in alphabetical order, and return them to the county clerk's office when he returns his assessment-roll, to be there preserved.

SEC. 24. All property is to be valued by the assessor, except such as is herein required to be valued by the owner.

THE ASSESSMENT-ROLL, THE CORRECTION THEREOF, AND THE TAX-LIST.

SEC. 25. On or before the fifteenth day of June, annually, the assessor shall make out and deliver to the county clerk, an assessment-roll, containing, in tabular form and alphabetical order, the names of the persons and bodies in whose names property has been listed in his county, with the several species of property and the value as hereinbefore indicated, with the columns of numbers and values footed; and in a column to be provided for that purpose, he shall write the words, "by the assessor," when the list was made by himself, together with the words, "absent" or "sick," "refused to list" or "refused to swear," or such other words as will express the cause why the person required to make the list, did not make it, and a neglect shall be taken as a refusal.

SEC. 26. The assessor shall take and subscribe an oath to be certified by the officer administering it, and attached to the assessment-roll, which oath is to be in substance as follows: I, C. D., Assessor of —— county, solemnly swear, that the value of all property, money and credits, of which a statement has been made and verified by the oath of the person required to list the same, is herein truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body, I have diligently, and by the best means in my power endeavored to ascertain the true amount and value; and that, as I verily believe, the full value thereof is set forth in the annexed return; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property, which he was required by law to list; nor in any way connived at any violation or evasion of any of the requirements of the law, in relation to the assessment of property for taxation.

SEC. 27. The county clerk and treasurer constitute a board for the correction of the assessment roll, and during the five days next succeeding the return of the assessment-roll, they shall sit at the office of the county clerk, at the county-seat, to hear and determine the complaint of all persons feeling aggrieved by any assessment. They shall have power to supply omissions in the assessment-roll, and for the purpose of equalizing the same, may increase, diminish, or otherwise alter and correct any assessment.

SEC. 28. Immediately after the assessment-roll is corrected, the county clerk is required to make out an abstract thereof, containing the whole number of acres of land listed in the county; the total valuation of the town-lots; the whole number of horses, and their total value; the whole number of mules and asses, and their total value; the whole number of cows, and their total value; the whole number of oxen, and their total value; the whole number of calves, and their total value; the whole number of sheep and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the whole number of musical instruments and their total value; the total number and value of clocks, watches, jewelry, gold and silver plate; the gross amount of all other property, with money and credits. Which abstract the clerk is directed to transmit forthwith to the auditor of the territory; but the census board is authorized to diminish or add to the above list, and to require such different or further matters to be returned as it deems advisable.

SEC. 29. The territorial census board constitutes a board for the equalization of taxes for the territory, and shall consist of the secretary, auditor and treasurer of the territory. They shall sit at the office of the territorial treasurer, at the capital, on the first Monday of July in each year, and are hereby authorized and required to examine the various assessments, as far as regards the territorial tax, and equalize the rate of assessment in the different counties whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity, by the different assessors.

SEC. 30. Such equalization may be made, by changing any of the assessments, or by varying the rate of taxation in any of the counties, as may be found most convenient; but in either case, the board is directed to preserve unchanged, as far as practicable, what would have been the aggregate amount of valuation had no such equalization been made. The board shall also fix and determine the rate to be levied for territorial taxes. The auditor of the territory shall be recorder of the census board, and shall make and preserve a record of their proceedings.

SEC. 31. On or before the second Monday of July in each year, the auditor is required to transmit to the clerk of each county, a statement of the changes, if any, which have been made in the assessment, and the rate of territorial tax which is to be levied and collected within his county, which, however, shall not exceed three mills on a dollar of the valuation, and when the board fixes no different rate, or if for any reason, the board should fail to sit, or the county clerk should fail to receive the statement of the rate of tax ordered by them, the rate first mentioned in this chapter, shall be deemed to be levied; and the clerk of each county, in making up the tax-list required by section thirty-three of this chapter, shall compute and carry out, in the proper column, a territorial tax, at the rate aforesaid. Any clerk failing herein may be fined in any sum not less than five hundred dollars, nor more than three thousand dollars, to be recovered by action of debt in the name of the people of the territory of Colorado.

Sec. 32. On the fourth Monday of July in each year, the board of county commissioners shall, by an order to be entered of record among their proceedings, levy the requisite taxes for the year; and the same may be levied at any time prior to the fourth Monday of July, if the statement required by section thirty-one, has been received from the auditor.

Sec. 33. As soon as practicable after the taxes are levied, the clerk shall make out a tax list in the tabular form and in alphabetical order, having distinct columns for lands and for town-lots, and for carrying out, in a column by itself, the amount of each different tax, and having one or more columns for delinquent taxes; but, instead of a column for the amount of personal property the word "personalty" may be written across the columns after the name, and the amount carried into the column of value. Such list may be in the following form:

Owner's name.	Part of the section.	Section.	Township.	Range.	Acres.	Name of town.	Lots.	Block.	Value.	Co. tax.	Territor'l tax.	School tax.	Road tax.
A. B............	Personalty............	....	....	....	....	....	....	....	300	1.20	.75	.15	...
....	....	....	....	....	....	....	....	....	480	1.92	1.20	.24	...
....	N E ¼...............	6	77	2w	160	....	....	....	300	1.20	.75	.15	...
....	W½ N E ¼............	8	77	1e	80	....	8	16	200	.80	.50	.10	...
....	....	....	....	....	....	....	10	30	500	2.00	1.25	.25	...
....	....	....	....	....	....	....	8	50	100	.40	.25	.05	...

Sec. 34. An entry is required to be made upon the tax-list, showing what it is, and for what county and year it is; and the county clerk shall attach to the list his warrant, under his hand and official seal, in general terms requiring the treasurer to collect the taxes therein levied according to law; and no informality in the above requirements shall render any proceeding for the collection of taxes illegal. The clerk is required to cause the list to be delivered to the treasurer of the county by the first day of September, and his receipt taken therefor; and such list is a full and sufficient authority for the collector to collect all taxes contained therein.

THE COLLECTION OF TAXES.

Sec. 35. The treasurer, on receiving the tax-list and warrant, shall proceed to collect the taxes therein levied, and the list and warrants shall be his authority and justification against any illegality in the proceedings prior to receiving the list; he is required to attend at his office during the month of September, to receive taxes, and at such places in the different precincts, in his county, as he shall appoint, between the first and last days of October, to receive the taxes; and he is also authorized and required to collect as far as practicable, the taxes remaining unpaid on the list of former years. It shall be the duty of the collector of taxes to visit each township or district in his county to receive and receipt for taxes, and all the taxes except delinquent tax on real estate, shall be collected, and the territorial tax returned to the territorial treasurer's office, on or before the fifteenth day of December, in each year.

SEC. 36. Auditor's warrants are receivable for the full amount of taxes payable into the territorial treasury, and county warrants are receivable at the treasury of the proper county, for the ordinary county tax, and any poor-tax, or poor-house tax; but money only is receivable for the school-tax. Road-taxes may discharged, and road-warrants received for their payment, as provided in the chapter relating to roads.

SEC. 37. When a territorial, or county, or road-warrant, is received by the treasurer, he is directed to indorse on it the amount for which it was received and the date thereof, and from that date the warrant is to be regarded as cancelled, and cannot be re-issued; but when the warrant amounts to more than is to be paid by the person presenting it, the treasurer will give him a certificate of the balance due him.

SEC. 38. If on the assessment-roll, or on the tax-list, there be any error in the name of a person taxed, the name may be changed and the tax collected from the person intended, if he be taxable, and can be identified by the treasurer or assessor; and when the treasurer, after the tax-list is committed to him, ascertains that any land or other property is omitted, he will report the fact to the assessor, who, upon being satisfied thereof, will enter it upon his assessment-roll and assess the value, and the treasurer will enter it upon the tax-list, and collect the tax as in other cases.

SEC. 39. No demand of taxes shall be necessary, but it is the duty of every person subject to taxation to attend in the township or precinct, at such time and place as the treasurer shall appoint, between the first and fifteenth days of October, and pay his or her taxes; and if any person shall neglect to pay it before the fifteenth day of October following the levy of the tax, the treasurer is directed to make the same by distress and sale of his or her personal property.

SEC. 40. When the treasurer distrains goods he may keep them at the expense of the owner, and shall give notice of the time of their sale within five days after the day of the taking, in the manner constables are required to give notice of the sale of personal property on execution; and the time of the sale shall not be more than ten days from the day of the taking; but he may adjourn the sale from time to time for a period not exceeding three days, and shall adjourn once at least when there are no bidders; and in case of an adjournment, he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping, and fees for sale, shall be returned to the owner, and the treasurer shall on demand render an account in writing of the sale and charges.

SEC. 41. If the treasurer be resisted, or impeded, in the execution of his office, he may require any suitable person to aid him therein; and if such person refuse to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action, in the name and to the use of the county; and the person resisting, shall be liable, as in the case of resisting the sheriff in the execution of civil process.

SEC. 42. On the first day of December the unpaid taxes of the preceding year become delinquent, and shall draw interest at the rate of twenty-five per centum per annum; and taxes upon real property are hereby made a perpetual lien thereupon, against all persons, except the United States and this territory.

SEC. 43. Before the first day of June, in each year, the treasurer is directed to offer at public sale, at the court-house in his county, all lands on which the taxes levied the preceding year still remain unpaid; but such sale shall not be void if not made till after the day named.

SEC. 44. The treasurer shall continue to receive payments of all taxes after the first day of December, upon the above terms, until paid by distress and sale.

SEC. 45. The treasurer shall give notice of the sale of real property, by publication thereof once a week for four weeks in a newspaper in his county, if there be one, the first of which shall be at least four weeks before the sale, and by a written notice, posted on the door of the court-house or building commonly used therefor, for four weeks before the sale. And if there be no newspaper published in the county, the like notice shall be given by posting one written notice, the above length of time, in each civil township in which any land to be sold is situate, and one on the court-house door; such notice shall contain a notification, that all lands on which the taxes of the preceding year (naming it), have not been paid, will be sold, and the time and place thereof, with a list of the lands. Ten per cent. upon the amount of taxes due shall be added, where lands are advertised.

SEC. 46. Such sale is directed to take place between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and may be adjourned from day to day, Sunday excepted, until all the lands are sold.

SEC. 47. At the July session of the board of county commissioners, the treasurer is required to file in the county clerk's office, a return of his sale of lands (retaining a copy in his office), showing the lands sold, the names of the owners, so far as known, the names of the purchasers, and the sums paid by them; and also, a copy of the notice of the sale, with a certificate of the service, verified by an affidavit; and such certificate shall be in evidence.

SEC. 48. The person who offers to pay the amount due on any parcel of land, for the smallest portion of the same, is to be considered the highest bidder; and when such portion constitutes a half or more of the parcel, it is to be taken from the east side thereof, dividing it by a line running north and south, except that town-lots are to be divided, in such case, lengthwise, by a line parallel with the proper lines of the lots. If the portion taken be less than one half of the tract, it is to be taken from the south-east corner, in a square form as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications: The homestead is liable to be sold for no tax save that which is due on itself exclusively, and the above directions, concerning the division of a tract of land, shall be modified so as to meet this requirement; and to that end, the quantity of land bid may be obtained by drawing the division line in any direction or form, so as to avoid the homestead; and when the homestead constitutes a part of the tract sold, and is not yet ascertained, the court may, in the action hereafter authorized, at the suggestion of either party, cause a proceeding to be had, similar to that required in relation to mechanics' liens, for the ascertainment of the homestead; and in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and to set it apart from the homestead.

SEC. 49. Should any person so bidding, fail to pay the amount due, the treasurer may again offer the land for sale, if the sale has not closed, and if it has closed, he may again advertise it, specifically and by description, by one written notice, posted for two weeks, in the civil township in which the land lies, and one such notice on the court-house; or the treasurer may recover the amount bid, by civil action, brought in the name of the county, in the township where the county-seat is situated.

SEC. 50. The county treasurer shall make out, sign and deliver to the purchaser of any real property sold for the payment of taxes, as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser, as the same was described in the record of sales, and also, how much and what part of each tract or lot was sold, and stating the amount of each kind of tax, interest, and costs, for each tract or lot for which the same was sold, as described in the record of sales, and that payment had been made therefor. If any purchaser shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate. For each certificate so delivered, the purchaser shall pay a fee of fifty cents to the county treasurer.

SEC. 51. Such certificate of purchase shall be assignable by indorsement, and an assignment thereof shall vest in the assignee, or his legal representative, all the right and title of the original purchaser.

SEC. 52. Real property sold under the provisions of this chapter, may be redeemed at any time before the expiration of two years from the date of the sale, by the payment, in specie, to the treasurer of the proper county, to be held by him, subject to the order of the purchaser, of the amount for which the same was sold, and thirty per cent. on the same, with ten per cent. interest per annum on the whole amount, from the day of sale, and the amount of all taxes accruing after such sale, with ten per cent. interest per annum on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption is made, which fact may be shown by the treasurer's receipt: *Provided*, That if real property of any minor, married woman, or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability be removed, upon the terms specified in this section; which redemption may be made by the guardian or legal representatives.

SEC. 53. The county treasurer shall, upon application of any party to redeem any real property sold under the provisions of this chapter, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale, substantially as contained in the certificate of sale, the date of the redemption, the amount paid, and by whom redeemed, and he shall make the proper entries in the book of sales in his office.

SEC. 54. Immediately after the expiration of the term of two years from the date of the sale of any lands for taxes, under the provisions of this chapter, the treasurer then in office shall make out a deed for each lot or parcel of land sold, and remaining unredeemed, and deliver the same to the purchaser, upon the return of the certificate of purchase; the treasurer is required to demand fifty cents for each deed made by him on such sales, but any number of parcels of land bought by one person may be included in one deed, as may be desired by the purchaser.

SEC. 55. Deeds executed by the treasurer shall be substantially in the following form: Know all men by these presents, that whereas the following described real property, viz.: (here follows the description) situated in the county of ——, and territory of Colorado, was subject to taxation for the year (or years) A. D. —— ; and whereas the taxes assessed upon said real property for the year (or years) aforesaid, remained due and unpaid, at the date of the sale hereinafter named; and whereas the treasurer of the said county did, on the —— day of ——, A. D. 18—, by virtue of the authority vested by law, at (an adjourned sale) the sale begun and publicly held, on the first Monday of ——, A. D. 18—, expose to public sale, at the courthouse (or office of the county treasurer) in the county aforesaid, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest and costs then due, and remaining unpaid on said property; and whereas at the time and place aforesaid, A. B., of the county of ——, and —— of ——, having offered to pay the sum of —— dollars and —— cents, being the whole amount of taxes, interest and costs then due, and remaining unpaid on said property, for (here follows the description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to the said treasurer, the said property was stricken off to him at that price; (and whereas the said A. B. did, on the —— day of ——, A. D. 18—, duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest to said property to E. F., of the county of ——, and —— of —— ;) and whereas two years have elapsed since the date of said sale, and the said property has not been redeemed therefrom, as provided for by law: Now, therefore, I, C. D., treasurer of the county aforesaid, for and in consideration of the said sum to the treasurer paid, as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said A. B., (or E. F.,) his heirs and assigns, the real property last hereinbefore described, to have and to hold, unto him, the said A. B., (or E. F.,) his heirs and assigns forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, C. D., treasurer, as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name, on this —— day of ——, 18—. C. D., Treasurer.

TERRITORY OF COLORADO, } ss.
—— County. }

I hereby certify that before me ——, in and for said county, personally appeared the above named C. D., treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to, and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed, as treasurer of said county, for the purposes therein expressed. Given under my hand (and seal) this —— day of ——, A. D. 18—. —— ——.

SEC. 56. When, by the mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, the county is to hold the purchaser harmless, by paying him the amount of principal and interest to which he would have been entitled, had the land been rightfully sold; and the treasurer and his sureties will be liable for the amount to the county, on his bond, or the purchaser may recover directly of the treasurer.

SEC. 57. It shall be the duty of the treasurer of each county to make a settlement annually with the county clerk, or board of county commissioners, between the first and fifteenth days of December; and the county clerk shall, immediately after such settlement is made, transmit to the auditor of the territory a statement, under his official seal, upon blanks provided by the auditor for that purpose, showing the exact condition of the territorial revenue in his county, and the balance due the territory. Any county treasurer who shall neglect to pay over to the territorial treasurer the balance so found due, within ten days after such settlement, shall forfeit to the territory five per cent. per month upon such balance, until the same is paid.

OF THE ASSESSMENT AND COLLECTION OF TAXES IN COUNTIES NOT HAVING A COUNTY ORGANIZATION.

SEC. 58. Whenever it shall be made to appear to the satisfaction of the territorial census board, that in any county there is no county organization, or no assessor, or treasurer, or that the assessor of such county has failed to make an assessment of the taxable property within such county, as required by law, so that there is danger that the territorial tax from such county will not be collected, then and in such case it shall be lawful for the census board to appoint some suitable and proper person to proceed to such county and make an assessment of the taxable, real, and personal estate within such county; the auditor shall thereupon deliver to such assessor, so appointed, proper assessment lists, and blank forms of assessment, as required herein in regard to assessments in counties having an organization; and the assessor so appointed, shall have and exercise all the powers of a county assessor within and for his county.

SEC. 59. Such assessor shall, without delay, make out and return to the auditor, an assessment-list, or roll, of his assessment in the same form as required of county assessors, as nearly as may be.

SEC. 60. Upon the receipt of such assessment-roll, the auditor shall, by advertisement, for ten days, in some newspaper published within the territory, give notice of the return thereof, and of the day, hour, and place, at which he will attend to hear objections thereto, which may be at his office, at the seat of government of the territory, or at some public place within such county.

SEC. 61. At the day, hour, and place named in such notice, the auditor shall attend for the purpose of hearing objections to such assessment-lists, and may correct all errors and omissions appearing therein, and may alter, add to, or diminish any assessments therein contained, and upon the final completion of all such corrections, shall indorse his approval upon such assessment-roll.

SEC. 62. Upon the approval of such assessment-roll, the auditor shall make out and deliver to some suitable and proper person, who shall be named by the census board, at the time of the appointment of such assessor, a tax-list, in the same form as required by section thirty-three of this chapter, save that he shall carry out therein, only the territorial taxes, and a percentage thereon, to be fixed by him, sufficient to cover the expenses of making such assessment; and such person, so appointed collector, shall proceed to collect the said taxes, in the same manner and with the same powers as county treasurers in collecting county taxes within their respective counties. On or before the day fixed by law for the settlement, by county treasurers, of their accounts, the person so appointed collector of taxes of any such county not having a county organization, shall exhibit his accounts and vouchers to the auditor, to be audited, adjusted, and settled; and the auditor shall proceed, without unnecessary delay, to audit, adjust, and settle the same, and report the amount found to be due to the territory, from such collector to the territorial treasurer. Such collector shall thereupon pay over to the territorial treasurer, the amount so found to be due, within ten days after such settlement; and for a failure herein, shall be liable to the same penalties as provided in the case of county treasurers defaulting.

SEC. 63. In case any taxes levied upon lands in any such county become delinquent, the person appointed collector, as aforesaid, shall, on the first Monday of May, following the year for which the same are assessed, proceed to sell the said lands and real estate, at public auction, to be held at the office of the territorial auditor, at the seat of government, in the same manner as required in the case of the sale of lands for delinquent taxes by county treasurers; such sale shall be continued from day to day until all of such lands are sold.

SEC. 64. In case, at any such sale, no person will pay the taxes levied upon any such lands, for the whole of the tract or parcel of land whereon the same are levied, the same shall be struck off to the territory.

SEC. 65. Upon the payment by any purchaser at any such sale, of the amount of taxes, interest and costs for which any tract of land, or the several tracts of land purchased by him, were sold, the collector shall issue and deliver to such purchaser, a certificate of his purchases, describing each parcel of land so sold, and setting forth the amount of taxes and costs for which the same was sold, and that payment hath been made therefor. For each such certificate the purchaser shall pay to the collector a fee of fifty cents.

SEC. 66. Every such certificate shall be assignable, by indorsement thereon, so as to vest in the assignee all right and title of the purchaser at such tax-sale in and to the premises purchased.

SEC. 67. Upon the completion of every such tax-sale, the collector making the same shall file in the office of the territorial treasurer, a return thereof, showing the lands sold, the names of the persons to whom the same were assessed, the names of the purchasers, and the sums paid by them respectively, therefor, or for which the said lands were forfeited to the territory, in cases where the same, or any thereof, were not sold.

SEC. 68. Real property sold by any such collector, under the provisions of the foregoing sections, shall be redeemable in the same manner as provided in section fifty-two of this chapter; but payment in case of such redemption, shall be made to the territorial treasurer; and if the same be not redeemed within the time required by law, the territorial treasurer shall execute to all purchasers, at such tax-sale, or their assigns, a deed or deeds for the premises sold as aforesaid.

SEC. 69. In case the collector appointed under the provisions hereof, shall die, or remove from the territory, or refuse to proceed with the duties of his office, pending the collection of any such tax, in any county having no county organization, the auditor of the Territory shall appoint some person to act in his stead; who shall qualify in his office and proceed to collect all such taxes, in the same manner and with the same powers as if originally appointed.

SEC. 70. The same person may be appointed assessor and collector of territorial taxes, in counties not having a county organization, or not having an assessor and treasurer, as aforesaid; and every person so appointed shall qualify in his office of assessor or collector, and give bonds for the due discharge of his duties in the same manner as required of county assessors and county treasurers; but every such bond shall run to the people of the territory of Colorado, and shall be in such penalty and with such security, as the territorial auditor shall fix and approve.

SEC. 71. For default or misfeasance in the duties of their respective offices, such assessors and collectors shall be liable to the same penalties as county assessors and treasurers.

SEC. 72. In all certificates of purchase, and tax-deeds, made for lands sold under the provisions hereof, as many tracts of land shall be inserted in such tax-deed or certificate, as the purchaser, or person to whom such tax-deed is made, may request, and may be entitled unto by virtue of such tax-sale, or the assignment of any certificate or certificates of purchase, issued thereat; and for every such tax-deed made in pursuance hereof, the territorial treasurer may demand and receive a fee of fifty cents and no more.

SEC. 73. The assessor appointed under the provisions of section fifty-eight of this chapter, shall receive such salary, not exceeding ten dollars per day, for every day actually occupied by him in making such assessment and preparing the roll thereof, and twenty cents per mile for each mile travelled by him, in going to and returning from the county for which he is so appointed, as the auditor shall audit and allow, to be paid out of the territorial treasury upon the warrant of the auditor, upon the return of such assessment-roll. The collector appointed under the provisions of section sixty-two shall receive the same percentage upon all moneys collected by him as such collector, as are, or may be, allowed to county treasurers for the collection of taxes, and mileage, at the rate of twenty cents per mile for each mile necessarily travelled by him in collecting such taxes, and returning the same to the treasurer.

An act to provide for the collection of the Territorial Revenue in certain counties, and for other purposes.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 74. (I.) That in the counties of this territory that have failed to contribute their proportionate share to the territorial revenue for the fiscal year 1867, and have made no provision for the collection of such revenue for the fiscal year 1868, the secretary of the territory shall appoint an assessor and collector for every such delinquent county, who shall be residents of the county for which they are appointed, to assess the taxable property of such county and collect such territorial revenue for the fiscal years above-mentioned, together with sufficient county tax to defray the expenses of such assessment and collection.

SEC. 75. (II.) Said assessor and collector shall qualify, receive the same compensation and discharge their respective duties at the same time and in the same manner as other county assessors and collectors not thus appointed.

SEC. 76. (III.) A territorial tax of three mills on a dollar, and a county tax of two mills on a dollar, is hereby levied upon the total valuation of the taxable property that shall be returned by the assessor appointed pursuant to the provisions of this act, for the year 1868, and in counties that have failed to collect the territorial tax for the year 1867, said total valuation less twenty-five per cent. thereof, shall be taken and considered the taxable assets of such county for the year 1867, upon which a like tax is hereby levied, the same to be collected in connection with the tax for the year 1868.

SEC. 77. (IV.) In counties that have collected no territorial tax for the year 1867, but have made or shall make suitable provision for the collection of such tax for the year 1868, the territorial tax for the year first mentioned, shall be collected by the county collector thereof, in the manner prescribed in the preceding section.

SEC. 78. (V.) The county tax herein authorized to be collected, shall, after deducting the expenses of the assessment and collection, remain in the hands of the person collecting it, until otherwise disposed of by the county commissioners of the county in which such collection is made.

SEC. 79. (VI.) In estimating the taxable assets of any county for the year 1867, the property of non-residents for said year, shall not be included in such assessment.

SEC. 80. (VII.) Should any county hereafter fail to collect or make suitable provision for the collection of the revenue due the territory from such county, such revenue shall be collected in the manner herein provided.

SEC. 81. (VIII.) *And be it further enacted,* That section two, article three, of an act entitled An act to organize and establish the treasury department, approved November 6, A. D. 1861, be and the same is hereby amended so as to read as follows: The territorial treasurer shall grant duplicate receipts under the seal of his office, for all sums of money which shall be paid into the treasury, one of which shall be delivered to the person entitled to receive it, and the other, the treasurer shall immediately transmit to the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

SEC. 82. (IX.) That none of the expenses incurred in the collection of any tax shall be paid by the territory.

SEC. 83. (X.) Each qualified county officer, whether elected or appointed, shall, before proceeding to the discharge of his official duties, furnish his signature, dates of the commencement and expiration of his term of office, together with his post-office address, to the clerk of his county, who shall officially authenticate their correctness and promptly forward the same to the secretary of the territory.

SEC. 84. (XI.) The secretary shall, thirty days prior to any general election for county officers, furnish the several county clerks throughout the territory, with blanks, sufficient and suitable for the purposes specified in the preceding section.

SEC. 85. (XII.) All acts and parts of acts conflicting with the provisions of this act, are hereby repealed.

An act concerning Territorial Revenue.

[*Approved January* 10, 1868]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 86. (I.) That hereafter there shall be levied and collected in each of the counties of this territory, a tax of five mills on the dollar, upon the assessed value of all taxable property for territorial purposes.

SEC. 87. (II.) That all acts and parts of acts inconsistent with this act, be and the same are hereby repealed.

SEC. 88. (III.) This act shall take effect and be in force, from and after its passage.

Prior Statutes Repealed. An act providing for the collection of the revenue. Approved November 7, 1861. Laws 1861, p. 117.

An act supplemental to an act providing for the collection of the revenue. Approved August 15, 1862. Laws 1862, p. 92.

An act to increase the revenue. Approved August 15, 1862. Laws 1862, p. 92.

An act to amend an act entitled An act providing for the collection of the revenue. Approved August 14, 1862. Laws 1862, p. 93.

An act to amend an act entitled An act providing for the collection of the revenue. Approved March 10, 1864. Laws 1864, p. 125.

An act amendatory of An act providing for the collection of the revenue. Approved January 11, 1867. Laws 1867, p. 83.

CHAPTER LXXVI.

ROADS AND HIGHWAYS.

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SECTION 1. The most usually travelled roads between the following-named places are hereby declared to be territorial roads, to wit: From Denver City to Pueblo, by way of Mrs. Coberlin's ranch and Colorado City. From a point where the Denver City and Pueblo road leaves the Platte river, near William Fisher's ranch, running up the east side of said river to a point on Plum creek, within one mile of its mouth, thence up Plum creek valley to the forks of East and West Plum creek, thence up the west branch to Sorter's ranch, and thence along the base of the mountains to Monument creek, to again intersect the Denver City and Pueblo road, near Garlick's ranch in El Paso county. From Fort Lyon by way of Pueblo, Canyon City, Platte Valley ranch and Fairplay, to Laurette. From Fairplay, by way of Tarryall City and Hamilton, to Jefferson. From Hamilton to Platte Valley ranch. From Denver City, by way of Box Elder station and Bijou station, to the junction. From Denver City, down the Platte river, by way of St. Vrain's, to Julesburg. From Denver City to Golden City. From Denver City, by way of Boulder, to Laporte. From Young's ranch to Canyon City, and from Turkey creek to Bley's ranch. From Denver City, by way of the Pennsylvania House, to Bradford. From Denver City, up Cherry creek, to the Fountaine qui Bouille. From St. Vrain to Golden City. From Denver City to Golden City, by way of Boyd's ranch, on Clear creek. From the mouth of Cache a la Poudre to Laporte, through the Cherokee Pass, to the western boundary of this territory.

From Pueblo, by way of Greenhorn's ranch, to Fort Garland. From Cisco and Head's ferry, across the Rio Grande del Norte, and from Fayette Head's to the southern boundary of the territory. From Fort Garland to Culabra, Costilla, Red River, Osage House. From Greenhorn's ranch, by James Gray's to the Cimarron, on the south line of the territory. From John H. Hayne's ranch, up the Huerfano to J. B. Doyle's, to the upper crossing of the Huerfano, by way of the Moscho Pass, to Fort Garland. From Canyon City to Greenhorn's ranch. From Denver to the south boundary of Weld county on the line surveyed by the county commissioners of Arapahoe county.

SEC. 2. Any person or persons desiring to have any territorial road changed, shall petition the board of county commissioners, which petition shall state the change asked to be made, and said petition shall be signed by not less than five persons who reside within two miles of that part of the road wished to be changed.

SEC. 3. It shall be the duty of the commissioners in any county in this territory, through which any territorial road is or may be located, in ten days after receiving any petitions as required in the preceding section, to post notices in three conspicuous places along the line of said road; said notices shall state the time and place when they will meet, and shall be posted at least ten days before said meeting.

SEC. 4. It shall be the duty of the commissioners, or any two of them, to meet at the time and place specified in said notices, and proceed to view said road according to the prayer of said petitioners, and to hear such allegations as may be made for or against the change prayed for; and thereupon the board of commissioners may, in their discretion, by an order to be entered of record, particularly describing the changes made therein, re-locate such territorial road, within their county, and such road or part thereof, upon payment of all damages occasioned by the opening of the same, as hereinafter mentioned, shall be and stand in lieu of so much of such road as said commissioners shall declare vacated: *Provided*, That the line and direction of such road, shall, not in any county, be changed further than necessary to straighten or locate the same upon better ground; nor shall the line of any such road in any county, be so changed that the same may not connect with such road in the adjoining county or counties.

SEC. 5. All roads shall be considered public highways which have been or may hereafter be declared territorial roads by act of the legislative assembly, or which have been or may be declared public roads by the board of county commissioners of any county, within such county, or which have been or shall hereafter be used and travelled by the public, so that the same would, according to the course of the common-law, be deemed public highways.

SEC. 6. Whenever a petition shall be presented to the board of commissioners of any county, praying for a public road to be laid out within such county, signed by not less than ten of the householders of such county, designating the *termini* and general course of such road, and the petitioners shall deposit with the clerk of the county, a sufficient sum to defray the expenses of viewing the proposed road, to be fixed by the board of commissioners, such board shall appoint a day for the hearing of such petition, and shall forthwith direct that some one of the petitioners, at his own expense, serve a written notice upon every person residing upon any of the lands across which it is proposed to lay out said road, setting out the substance of such petition, and the time appointed for hearing the same, and that the clerk post the like notice upon the door of his office not less than ten days before the hearing of such petition. Upon the day set for the hearing of such petition, if it appear that such notices have been given, as above required, (and the service and posting of such notice may, in any proceeding wherein such road shall come in question, be sufficiently proven by the affidavit of the person serving or posting the same, attached to a copy of the notice so served or posted,) the commissioners shall proceed to hear the allegations and objections of the petitioners and all persons objecting, and if it shall seem to them that such road is necessary, or that it is expedient to locate the same, shall proceed to appoint three disinterested householders of the county, as viewers, to view and locate such road, and to make or cause to be made a survey and plat thereof, to determine the probable expense of opening the same so that the same may be travelled, and to assess and fix the damages and benefits which may accrue to the owner of any lands over which such road shall be located. The commissioners shall, at the time of the appointment of such viewers, also fix and publicly announce a day and place for the meeting of such viewers, not less than ten days subsequent to the day of such appointment.

SEC. 7. The county clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment, and requiring them to meet at the day and place named by the board of commissioners, and to proceed thence to view and locate such road, and to survey or cause the same to be surveyed and platted, and return the said plat with their assessment of the damages and benefits accruing to the owner of any lands over which the same may pass by reason of the location thereof, and the probable cost of opening such road to travel, into the office of the county clerk, on the first day of the next regular meeting

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it shall not be lawful to locate the same through any dwelling-house, nor within thirty rods thereof, nor through any barn, stable, office, mill, or other building, nor through any garden, orchard, vineyard, or stable-yard, appurtenant to any dwelling-house, without consent of the owner of such premises.

SEC. 16. The manner of surveying and laying out cart-ways, and wagon-roads, from the dwelling of any person to any public road, and of condemning the lands necessary therefor, shall be the same as hereinabove provided; but the petition in such case need be signed only by such person, and the expense of viewing and surveying such road, and the damage which may accrue to any person by reason of laying out the same, and the expense of opening such road, shall be paid by the petitioner.

SEC. 17. Whenever any public highway is laid out, or any alterations are made in the location of any territorial road, the county clerk shall notify the road overseers of the several districts through which such road is laid out or changed.

SEC. 18. All territorial and other public highways are sixty feet in width, but the county commissioners, in laying out any public road under the provisions hereof, may direct that the same shall be of a less width. Cart-ways laid out from the dwelling-house of any person to a public highway, shall be of such width as the county commissioners may fix, not less than twenty, nor more than forty feet.

SEC. 19. When any public road heretofore laid out or travelled, as such, or hereafter to be laid out or travelled, crosses any creek, or stream of water, and such stream during any part of the year is usually fordable, where such road crosses, or shall cross the same, the said ford, and the banks of the stream adjacent thereto, and the roadway or track usually travelled, leading thereto from such highway, shall be deemed and taken to be a part of such public highway. Any person who shall obstruct any such ford, or the road leading thereto, or shall dig down the banks of such ford, or who shall erect any dam, embankment, or other obstruction, in such stream, or any wing-dam, or other obstruction upon the banks or edge of such stream, for the purpose of raising the water of such stream upon the said ford, and so as to render the said ford impassable, or more difficult of passage than theretofore, or who shall maintain any such dam, wing-dam, embankment, or obstruction heretofore erected, after being required by the road overseer of the district wherein the same is situate, to remove or abate the same, shall be liable to the same penalties as for obstructing a public highway.

SEC. 20. No person or corporation shall, upon any pretence or authority, be permitted to erect a toll-bridge over any stream at or upon any public ford or road-crossing, or so near thereto as, by the abutments, embankments, or piers of such bridge, to obstruct or render impassable the said ford or the roadway leading thereto.

SEC. 21. Where any person or corporation hath heretofore erected a bridge over any stream at or near the crossing of a public highway, used and travelled as such at the time of the erection of such bridge, and by fences, embankments, dikes, walls, or other obstructions, hath obstructed the said ford, or the road or track leading thereto, as usually travelled when such stream is fordable, such person or corporation shall forthwith cause all such obstructions to be removed and abated, so that the public may use and enjoy the said ford as before the erection of such bridge; and for a failure to remove such obstruction within thirty days after this chapter shall be in force, shall pay a fine of twenty-five dollars, to be recovered by action of debt, in the name of the people of the territory of Colorado, in any court of competent jurisdiction, and the like fine for every day that such obstruction is suffered to remain after said thirty days. Until such obstructions are removed and abated as hereinbefore required, the owner or owners of such bridge, shall not demand or receive toll thereat.

SEC. 22. It shall be the duty of the overseer of roads of the district wherein any such obstruction is situate, to require the owner or owners of such bridge, to abate such obstructions; and upon failure of such owner so to do, such overseer of roads may proceed to abate such obstructions, and to cause to be instituted, all proper actions for the recovery of the penalty in the last preceding section provided.

SEC. 23. The board of commissioners shall divide their counties into suitable road-districts, conforming as nearly as may be to the election precincts, and in each district so formed there shall be elected, annually, in the same manner as other district or precinct officers, a road-overseer for such district, who shall hold his office for the term of one year, and until his successor is elected and qualified.

SEC. 24. The road-overseers shall cause all the public highways within their respective districts to be kept in good condition, and clear from obstructions.

SEC. 25. When any bridge is to be built, the estimated cost of which shall exceed fifty dollars, the work shall be given out by contract, and the overseer of the district shall post written notices in two of the most public places of his district, and one at the court-house door, twenty days before the letting of such contract, and all contracts shall be awarded to the lowest responsible bidder, subject to the approval of the board of commissioners.

SEC. 26. Each road-overseer shall, between the first day of

June and the first day of September in each year, notify all persons in his district, subject to road-tax, to appear at such time and place, and with such tools, as he may designate, to perform the amount of work required in lieu of road-tax: *Provided*, That nothing contained in this section, shall prevent the overseer from calling out any of such persons to perform such work at any time when he shall consider such work needed.

SEC. 27. Any person neglecting or refusing to perform such work, according to the order of the overseeer, shall then become liable to pay the road-tax, and if such tax is not paid before the fifteenth day of September, such person shall be considered a delinquent, and the overseer shall proceed to levy upon and sell at public auction (after giving ten days' notice), to the highest bidder, for cash, any property of said delinquent, or so much thereof as may be necessary to satisfy such delinquency and costs, or at the option of the overseer, such delinquent shall pay a fine of ten dollars, to be recovered with costs by action of debt, in the name of the county, before any justice of the peace, and the judgment of the justice shall be, in case of conviction, that the defendant stand committed to the custody of the overseer of roads, and work out the said fine and costs upon the public roads, at the rate and wages of one day's labor for each five dollars of such fine and costs. If any such fine be paid, the same shall be applied by the overseer of roads, to the same purposes as the road-tax, and he shall account therefor to the county commissioners.

SEC. 28. Each road-overseer shall report to the board of commissioners at their regular meeting, on the first Monday in October of each year, a list of all persons in his district subject to a road-tax; the names of all persons who have performed the work instead thereof; amount of money collected and paid out by him; from whom received; to whom, and for what paid; the number of days he himself has been in actual service, and a list of delinquents.

SEC. 29. The overseers shall receive for their services, while in actual employment, the same pay per day as is allowed to the commissioners of their respective counties.

SEC. 30. The boards of commissioners in their respective counties, may levy a property-tax for road purposes, which shall not exceed fifty cents on each one hundred dollars, to be levied and collected in the same manner, at the same time, as other property taxes are levied and collected, in each year. Every able-bodied man, between the ages of twenty-one and fifty years, shall annually pay to the overseer of roads of the district wherein he resides, between the first day of June and the fifteenth day of September, a road-tax of five dollars, or in lieu of such tax, shall perform two days' labor upon the public roads whenever warned by the overseer of roads as herein provided. The provisions of this section shall not apply to incorporated cities and towns.

SEC. 31. The property-tax so levied, shall be collected by the county treasurer, and paid out on the orders of the overseer, countersigned by the chairman of the board of commissioners, which board shall apportion the road-fund to the several road-districts; but the road-tax shall be collected by the overseers in their respective districts: *Provided*, That the board of commissioners shall require a bond, of any overseer, to secure the payment of any money that he may receive under the provisions of this chapter.

SEC. 32. If any person shall wilfully erect or place, or cause to be erected or placed, within any public highway, any obstruction thereto, or shall wilfully obstruct or encroach upon any public highway, by falling trees, or placing stones therein, or by erecting any fence, house, or other structure therein; or if any person shall tear down, burn, destroy, or injure any bridge upon any public highway, every person so offending, shall pay a fine of not less than ten dollars, nor more than three hundred dollars, and a like fine of ten dollars for each day that such obstruction shall be suffered to remain in such road.

SEC. 33. No person, or mining, ditch, or milling company shall be allowed, by virtue of any charter or law granted or made for mining, milling, irrigating, or other purposes, to dam the waters of any stream in this territory, so that the water or waters raised by such damming shall flow back to a higher point or mark on the margin of such stream than high-water-mark, or so that the water thus dammed, shall overflow any wagon-road or other road, running or being situated on the side or banks of such stream, or so as to cause the water so dammed to undermine, weaken or damage any bridges, walls, or embankments of such road.

SEC. 34. Any person violating the preceding section, shall be liable to a fine not exceeding five hundred dollars, nor less than ten dollars; and shall also be liable to the party injured for any damages resulting therefrom, to be recovered by an action of trespass on the case.

SEC. 35. Whenever the owner or owners of any ditch, race, or drain, for mining, milling, manufacturing, irrigating, or other purposes, shall fail, neglect or refuse to construct a bridge over such ditch, wherever the same crosses a public highway, within thirty days after this chapter shall be in force, every such owner, and every officer and trustee in any corporation owning such ditch, shall be liable to a fine of fifty dollars, and a fine of five dollars for every day that such ditch shall remain unbridged after the expiration of such thirty days.

SEC. 36. All fines, penalties, and forfeitures provided by this chapter, where not otherwise specified, shall be recoverable by action of debt, in the name of the people of the territory of Colorado, before any court of competent jurisdiction. All such fines, penalties, and forfeitures shall be paid into the county treasury; and shall be a fund for the improvement of roads in the road-district wherein the same accrued.

An act to provide for the better collection of the Road-Tax.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 37. (I.) That in the counties of Lake, Park, Summit, Gilpin, Clear Creek, El Paso, Pueblo, and in the mountain districts of Jefferson and Boulder, the road-tax of five dollars required by law to be paid to the road-overseer in each road-district, shall be deemed to be delinquent, if the same be not paid, and if the two days' road-labor, allowed in lieu thereof, be not performed before the first day of August in each year.

SEC. 38. (II.) *And be it further enacted,* That, in case any such road-tax in any county shall be unpaid and delinquent, the road-overseer of the district wherein the same is due and payable, may serve upon any debtor of the person from whom such road-tax is due, a notice, printed or in writing, or partly printed and partly in writing, that such road-tax has been demanded and is unpaid, and requiring such debtor of the person delinquent, to pay to such road-overseer, the amount of such road-tax, with fifty cents in addition thereto, for the costs of such notice; and every such notice may require such debtor to appear before some justice of the peace of the county, at a day and hour to be named therein, to answer to such road-overseer as the garnishee of the delinquent tax-payer.

SEC. 39. (III.) The service of such notice shall have all the effect of the service of a garnishee process; and upon the service thereof, the person upon whom the same is served, shall be authorized to pay to the road-overseer, the amount of five dollars, with fifty cents in addition thereto, and such payment shall, to the extent thereof, bar any further liability therefor to such delinquent tax-payer.

SEC. 40. (IV.) If such debtor, upon whom service of any such notice is made, shall fail or refuse to pay to the road-overseer serving the same, the amount of such tax with the fee of fifty cents for serving such notice, as provided by sections two and three of this act, he shall be liable for all costs thereafter accruing in the said proceedings of garnishment.

SEC. 41. (V.) Every road-overseer, for the service of any such notice, shall receive a fee of fifty cents.

SEC. 42. (VI.) This act shall take effect and be in force from and after its passage.

Prior Statutes Repealed. An act to establish and regulate territorial roads. Approved August 15, 1862. Laws 1862, p. 94.

An act concerning roads and highways. Approved March 11, 1864. Laws 1864, p. 127.

An act supplementary to an act concerning roads and highways. Approved January 27, 1866. Laws 1866, p. 60.

An act in relation to territorial roads. Approved January 10, 1867. Laws 1867, p. 84.

An act to legalize the action of the board of commissioners of Arapahoe county, in relation to a certain road. Approved January 8, 1867. Laws 1867, p. 84.

An act to amend an act entitled An act to establish and regulate territorial roads. Approved March 11, 1864. Laws 1864, p. 130.

An act to amend an act entitled An act to establish and regulate territorial roads. Approved March 11, 1864. Laws 1864, p. 130.

An act for the protection of roads. Approved March 11, 1864. Laws 1864, p. 131.

CHAPTER LXXVII.

SCHOOLS.

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ARTICLE I. SUPERINTENDENT OF PUBLIC INSTRUCTION.

SECTION 1. The territorial treasurer is *ex officio* superintendent of public instruction, and shall perform all the duties which by this chapter, or any law of the territory, pertain to that office. He shall be paid annually, out of the territorial treasury, the sum of one hundred dollars in full for the performance of his duties as such superintendent of public instruction.

SEC. 2. The duties of the superintendent of public instruction shall be as follows: He shall file all papers, reports, and public documents transmitted to him by the school-officers of the several counties each year, separately, and hold the same in readiness to be exhibited to the governor, or to any committees of either house of the legislative assembly; and shall keep a fair record of all matters pertaining to the business of his office. He shall have a general supervision of all the district-schools of the territory, and shall see that the school-system is, as early as practicable, put into uniform operation; and shall recommend to the several school-districts an uniform series of text-books to be used in the schools thereof. He shall prepare and have printed suitable forms for all reports required by this chapter, and shall transmit the same, with such instructions in reference to the course of studies as he may judge advisable, to the several officers entrusted with their management and care. He shall make all further rules and regulations that may be necessary to carry the law into full effect, according to its spirit and intent, which shall have the same force and effect as though contained herein. He shall cause so many copies of this chapter, with the forms, regulations, and instructions herein contemplated thereunto annexed, to be from time to time printed and distributed among the several school-districts of the territory, as he shall deem expedient. He shall make a report to the legislative assembly on the first day of each regular session thereof, exhibiting the condition of public-schools, and such other matters relating to the affairs of his office as he may think proper to communicate. He shall make an equal distribution of the school-funds among the several counties, on the first Monday in March, according to the aggregate number of the days' attendance of the scholars attending the common-schools, in the several counties, as reported by the county superintendent of each county, who shall make report of the same, at least two weeks before the first Monday in March, in each year, to the superintendent of public instruction.

SEC. 3. All books, maps, charts, or school-apparatus, which may be received by the superintendent of public instruction, from publishers, inventors, or manufacturers, shall be placed by him in the public library of this territory.

ARTICLE II. COUNTY SUPERINTENDENT OF SCHOOLS.

SECTION 1. There shall be chosen at the first election of county officers, and biennially thereafter, in each organized county in this territory, a county superintendent of schools, who shall hold his office for two years, or until his successor is chosen and qualified.

SEC. 2. Within twenty days after his election, the county superintendent of schools shall take and subscribe an oath that he will faithfully discharge the duties of his office, and he also shall execute a bond to the board of county commissioners of his county, in a penal sum to be fixed by the board of county commissioners (but in no case shall the amount of said bond be less than twice the amount of funds which may have been in the hands of the superintendent of the county at any one time during the previous year), with good and sufficient sureties, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties of the superintendent, and that he will render a just and true account of all money and other property which may come into his hands or under his control, as superintendent of the schools of said county. Should he fail to qualify as above required, or if for any other reason there be a vacancy in the office, the county commissioners of the county shall appoint a suitable person, who shall qualify in like manner.

SEC. 3. The duties of the county superintendent of schools shall be as follows: He shall, on the first day of December of each year, transmit to the superintendent of public instruction a report containing an abstract of the several particulars set forth in the reports of the district secretaries, together with a statement of the financial affairs of his office, and such suggestions as he may think proper to make relative to the schools of his county. He shall keep an accurate account of the receipts and expenditures of his office, and shall render accounts-current thereof at any time when required by the superintendent of public instruction. He shall take receipts for all moneys paid out, in a book provided for that purpose; file all warrants and orders drawn on him by the respective presidents of the district-boards, and all other papers transmitted to him pertaining to the business of his office; and shall hold the same subject to the inspection of the superintendent of public instruction, or any of the school-officers of his county. He shall keep a correct account of all moneys received from the county officers, specifying the peculiar source from which the same accrued. He shall distribute to the district officers within his county, such blank forms, circulars, and other communications as may be transmitted to him for that purpose, by the superintendent of public instruction. On the first Monday in April, annually, he shall apportion the county school-tax, and all money in his hands appropriated for the support of the schools, among the several school-districts of his county, in proportion to the number of persons reported to him by the respective district secretaries, and shall record a statement thereof in his office. He shall immediately notify the president of each school-district of the amount to which his district may be entitled by said apportionment, and shall pay the same over to the district treasurer, upon the warrant of the president, countersigned by the secretary. He shall divide the county into school-districts, and may alter and change the boundaries of districts thus formed, from time to time, as the convenience of the inhabitants of the aforesaid districts may require; and shall proceed to make such change at any time when petitioned by two thirds of the legal voters of any district. He shall examine all persons offering themselves as teachers of public-schools, and if, in his opinion, such person is qualified to teach a public-school, shall give him or her a certificate, authorizing him or her to teach a public-school in his county for one year; whenever practicable, the examination of teachers shall be competitive; and the certificate shall be graded according to the qualifications of the applicant. He shall have the general superintendence of the schools in his county, and shall visit each school at least twice each term, and shall have power to dismiss all teachers he may find to be incompetent.

SEC. 4. Should he fail to make his reports required in the foregoing section, he shall forfeit the sum of twenty dollars, and suit shall be brought on his official bond for the collection of the same, with damages, by the prosecuting attorney.

SEC. 5. In all cases when it shall be necessary to administer any oath or affirmation, under the provisions of this chapter, or any other law, pertaining to the duties of the county superintendent, he is hereby authorized to administer the same.

ARTICLE III. SCHOOL–TAX.

SECTION 1. The county commissioners shall, at the time of levying the tax for county purposes, cause to be levied a tax for the support of schools within the county, of not less than five mills on the dollar, and not more than ten, of the assessed value of all taxable property, real and personal, within the county, which shall be collected by the county collector, at the same time and in the same manner as state and county taxes are collected, except that it shall be receivable only in cash.

SEC. 2. The county treasurer shall, on the first Monday of January, of each year, pay over the amount of said tax which shall have been collected, to the county superintendent, and shall render him a statement of the amount uncollected; the amount unpaid shall be collected at any subsequent time, as delinquent county taxes are collected, and shall be paid over, when collected, to the county superintendent aforesaid. The collector shall be allowed one per cent., by the county superintendent, for collecting said tax; and should he fail at any time to pay over the same, as herein provided, he shall forfeit the sum of fifty dollars, and double damages, to be collected on his official bond.

ARTICLE IV. SCHOOL–DISTRICTS—ORGANIZATION—POWERS.

SECTION 1. Upon the formation of a new school-district, the county superintendent shall notify some qualified voter thereof, by written notice, describing the boundaries of the district, and also the time and place of the first meeting.

SEC. 2. Such qualified voter shall notify each elector in the district of the same, by personal service, as far as convenient, and shall post a notice at the place of meeting, and also in three other public places in the district, stating the boundaries of the district and the time and place of meeting, at least six days before the time of such meeting. All male citizens over the age of twenty-one years, who have resided for thirty days within such district, and who are liable to pay a school-tax therein, and none others, shall be deemed qualified electors at school-meetings held within such district: *Provided*, That after the first year of the organization of any such school-district, no person shall be deemed a qualified elector at any such meeting, who being liable to pay a school-tax therein, in the year preceding, hath failed to pay the same.

SEC. 3. The qualified electors of the district, when assembled in accordance with the notice required in the foregoing section, shall organize by appointing a president and secretary, who shall act as judges of the election, and the name of each elector shall be recorded by the secretary. They shall then, by ballot, elect one president, one secretary, and one treasurer, who shall constitute a board of directors for the district, and shall hold their offices until the next succeeding annual district election, and until their successors are elected and qualified.

SEC. 4. Said directors shall, within ten days after their election, appear before some justice of the peace, and take an oath for the faithful performance of their duties; and in case they fail to do so, they shall each forfeit the sum of twenty-five dollars, for the use of the school-district.

SEC. 5. Each school-district formed under the provisions of this chapter, is hereby declared to be a body corporate, by the name and style of School-District No. —, in the county of ——, and territory of Colorado; and in that name it may hold property and be a party to suits and contracts.

SEC. 6. The regular meeting of each school-district shall be held on the first Monday of May and October of each year.

SEC. 7. The qualified electors of the district when assembled shall have power: *First*, To appoint a chairman and secretary, in the absence of the regular officers. *Second*, To adjourn from time to time, as occasion may require. *Third*, To determine the number of schools which shall be established in the district, and the length of time that each shall be taught. *Fourth*, To fix the site for each school-house, taking into consideration in doing so, the wants and necessities of the people of each portion of the district. *Fifth*, To lay such tax on the taxable property of the district as the meeting shall deem sufficient, for any of the following purposes: To supply any deficiency in the fund for the payment of teachers; to purchase or lease a suitable site for a school-house, or school-houses; to build, rent, or purchase a school-house or school-houses, and to keep in repair and furnish the same with the necessary fuel and appendages; for procuring libraries for the schools, books and stationery for the use of the board and district meetings; and to defray all other contingent expenses of the district. *Sixth*, To direct the sale or other disposition to be made of any school-house, or the site thereof, and of such other property, real or personal, as may belong to the district; and to direct the manner in which the proceeds arising therefrom shall be applied. *Seventh*, To determine what branches of learning shall be taught in the schools of their districts. *Eighth*, To delegate any or all of the powers contained in the foregoing specifications to the district-board. *Ninth*, To fix the compensation of the secretary and treasurer of the district, and to transact generally such business as may tend to promote the cause of education in accordance with the provisions of this chapter.

SEC. 8. In levying a tax, the district meeting shall designate the respective objects for which the same is raised, and the amount to be raised for each object, and the aggregate amount shall be assessed and collected by the secretary, as herein provided.

SEC. 9. They may adopt such rules of order, not incompatible with the provisions of this chapter, and instructions of the superintendent of public instruction, for the government of district meetings, and may alter and change the same from time to time, as occasion may require; and may prescribe the manner of taking the sense of the meeting upon any question: *Provided*, That the last specification shall not apply to the selection of officers.

SEC. 10. In all cases when there are moneys belonging to the school-house fund, remaining in the hands of the district treasurer of any school-district, and the board of directors thereof are satisfied that such moneys are not required to build a school-house, or school-houses, in said district, or repair or furnish the same, such moneys may be transferred and accredited to the teachers' fund, and applied to the payment of teachers.

SEC. 11. There shall be elected in each organized school-district, at the regular district meeting on the first Monday in May of each year, one president, one secretary, and one treasurer of the district, who together shall constitute a board of directors for the district, and shall hold their offices for one year, and until their successors are elected and qualified. If for any cause the annual election should not be held at the regular meeting, a special meeting for that purpose may be held.

SEC. 12. Said directors shall qualify, in the manner prescribed in the preceding article for directors elected upon the formation of a new school-district; and in case they neglect or refuse so to do, they shall be subject to the same penalty.

SEC. 13. The board of directors may hold such regular, special, or adjourned meetings, as they may from time to time determine.

SEC. 14. The district board shall make all contracts, purchases, payments and sales, necessary to carry out every vote of the district, for procuring any site for a school-house, renting, repairing, or furnishing the same, and disposing thereof, or for keeping a school therein, and performing such other duties as may be delegated to them by the district meeting.

SEC. 15. They may, with the concurrence of the board of directors of an adjoining district or districts, admit pupils from either of said districts to a school within their own district; but said pupils shall be enumerated in their respective districts, and the portion of the school-money to which they may be entitled by said enumeration shall be applied to the support of said school. The parents or guardians of said pupils shall pay such portion of the contingent expenses, and the amount to be contributed by voluntary subscription for the support of said school, as the board may deem equitable.

SEC. 16. The district board shall require the secretary and treasurer each to give bond to the district, in such penalties and with such securities as, in their opinion, will secure the district against any loss, conditioned for the faithful application of all moneys which may come into their hands by virtue of their respective offices; said penalty may be increased, from time to time, as the interest of the district may require. The bond shall be filed with the president of the board, and in case of a breach of the condition thereof, he shall bring suit thereon in the name of the district.

SEC. 17. In each organized district, they shall act as judges of all district elections.

SEC. 18. They shall, from time to time, examine the books and accounts of the treasurer, and make settlement with him; and shall, at each regular meeting of the district, present to the same a full statement of the receipts and expenditures of the district, and such other matters as may be deemed important.

SEC. 19. They shall appoint a committee from their own body to visit the respective schools of the district, monthly, and to aid the teachers in establishing and enforcing rules for the government of schools, and see that the teachers keep a correct list of the pupils, the time during which they attend school, the branches of learning which each is studying, and such other matters as may, in the opinion of the board, tend to promote the welfare of the school.

SEC. 20. They shall audit and allow all just claims against the district, and the president shall draw an order for all demands thus audited, on the district treasurer.

SEC. 21. They shall, upon the written request of five legal voters of the district, or whenever they deem it expedient, call special meetings thereof; but in all such cases, the notice of such meeting shall clearly state the precise object for which it is called, and the time and place at which it is to be held.

SEC. 22. Should a vacancy occur in the board, they may fill the same by appointment, unless it is deemed expedient to call a special meeting of the district for the purpose.

SEC. 23. The county superintendent and district board of directors may determine whether a school of a higher grade shall be established in the district, the number of teachers to be employed, and the course of instruction to be pursued therein, and the board may erect for the purpose, one or more permanent school-houses, and shall cause such classification of the pupils thereof as they may deem necessary, but in selecting the site for such school-house or school-houses, the permanent interest and future welfare of the people of the entire district shall be consulted.

SEC. 24. Where there are twenty-five or more German children within any school-district, the board of directors, with the approval of the county superintendent of schools, shall establish a school wherein both the German and English languages shall be taught.

SEC. 25. Where there are fifteen or more colored children in any school-district, the board of directors thereof, with the approval of the county superintendent of schools, may provide a separate school for the instruction of such colored children.

SEC. 26. The district board shall employ all teachers necessary for the schools of the district, and pay them by draft on the treasurer, but they must not overdraw the amount due from teachers' fund; and when there are not sufficient funds in the hands of the treasurer for the payment of such teachers, the balance shall be paid by the persons sending pupils, in such manner as may be agreed upon by the teachers and the district board.

ARTICLE V. DISTRICT OFFICERS—THEIR DUTIES.

SECTION 1. The president, when present, shall preside at all meetings of the board and of the district, sign all warrants for the collection of taxes, all orders on the treasury for the payment of money, and shall draw all drafts upon the county superintendent for money apportioned to his district.

SEC. 2. All drafts and orders drawn on the district treasurer, as required in the foregoing section, shall specify the fund on which they are drawn, and the use for which the money is designed, and shall be countersigned by the district secretary.

SEC. 3. The president shall appear in behalf of his district, in all suits brought by or against the same; but when he is individually a party, this duty shall be performed by the secretary.

SEC. 4. The secretary shall record all proceedings of the board, and of the district meetings, in separate books, to be kept for that purpose; shall preserve copies of all reports made to the county superintendent; shall file all papers transmitted to him by other school officers, pertaining to the business of the district; and shall countersign all drafts, warrants, and orders, drawn by the president.

SEC. 5. He shall, between the first and fifteenth days of September, of each year, take and keep and record a list of the names of all persons in the district, between the ages of five and twenty-one years, and shall deliver a copy of the same to the principal teacher of each school in the district.

SEC. 6. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the district board, to be audited and paid, as herein provided, out of the school-house fund.

SEC. 7. He shall give ten days' previous notice of all regular and special meetings of the district, as herein authorized, by posting up a written notice in three different places therein; and shall furnish a copy of the same to the teachers of each school in the district, to be read once in the presence of the pupils thereof.

SEC. 8. The district secretary shall, on the first Monday of February, in each year, submit a report to the county superintendent, for the year past then ending, of the number of schools taught in such district, the number of scholars attending said schools, the number of days each scholar attended the same, and the aggregate number of days of attendance of said schools, respectively, as certified by the teachers of the several schools of such district.

SEC. 9. On the first day of October of each year, he shall make out and file in the office of the county superintendent a report of the affairs of the district, containing: *First*, The number of persons between the ages of five and twenty-one years. *Second*, The number of schools, and the branches taught in each. *Third*, The number of pupils in each school. *Fourth*, The number of teachers employed in each school, and the average compensation of each per month. *Fifth*, The number of days the school has been taught, and by whom. *Sixth*, The average cost of tuition for a pupil per month in each school. *Seventh*, Books used in each school. *Eighth*, The number of volumes in the library of each school. *Ninth*, The aggregate amount paid teachers during the year, the source from which the same was received, and the amount of the teachers' fund in the hands of the treasurer. *Tenth*, The number of district school-houses, and the cost of each. *Eleventh*, The amount raised in the district by tax for the erection of school-houses, and for all other purposes authorized in this chapter, and such other information as he may deem useful.

SEC. 10. Should secretary fail to file his reports as above directed, he shall forfeit the sum of twenty-five dollars, and shall be liable to make good all loss resulting to the district from such failure; suit to be brought in both cases by the president, in the name of the district, on his official bond.

SEC. 11. The treasurer shall have the custody of all moneys belonging to the district, and shall pay out the same, upon the order of the president, countersigned by the secretary, and shall keep an account of the receipts and expenditures thereof, in a book provided for that purpose.

SEC. 12. The moneys for the payment of teachers shall be called the "teachers' fund," and that for school-houses and district expenses, the "school-house fund;" and the treasurer shall keep distinct and separate accounts with them, and no warrant for money shall be paid by the treasurer which does not specify the fund on which it is drawn, and the specific use to which it is to be applied. The school-house fund shall consist only of taxes collected in the district; and all other school-moneys belonging to the district shall go to the teachers' fund, and shall be applied to no other use except to pay the wages of school-teachers in the district.

SEC. 13. The treasurer shall apply for and receive all money apportioned to the district by the county superintendent when notified of said apportionment.

SEC. 14. He shall render a statement of the finances of the district, as shown by the records of his office, at any time when required by the district board.

ARTICLE VI. COLLECTION OF TAXES.

SECTION 1. Whenever a tax has been voted by the district, the secretary shall obtain a transcript of the last assessment-roll of the county, and shall add thereto any taxable property therein omitted, having himself assessed the value thereof; and shall post up a list of the names of the persons taxed, at three or more places in the district, with the amount due from each set opposite their respective names, so far as their names may be known, at least thirty days previous to his proceeding to collect the tax.

SEC. 2. Whenever any school-district tax has been voted at any meeting of such district, it shall not be lawful, after the posting of the assessment-lists of property whereon such tax is to be levied, to reconsider the question of the levy of such tax.

SEC. 3. Should any one, when called on, neglect or refuse to pay such tax, the secretary shall proceed to collect the same by distress, and sale of goods and chattels, found within the district, having first posted up at least ten days' previous notice of such sale, in three of the most public places in the district.

SEC. 4. When the owner of any claim or claims on lands fails to pay the tax thereon, such failure shall be reported by the secretary to the county collector of taxes, in time for the same steps to be taken by such collector, as are prescribed for the sale of claims for delinquent county taxes, for the same year;

the claim shall be sold, in like manner and with the same consequences, as though sold for delinquent county taxes; and if, for any cause, they are not then sold at the proper time, they may be sold the following or any subsequent year, in the same manner and with the same consequences as above contemplated.

SEC. 5. The amount of tax collected by the county collector, in accordance with the provisions of the foregoing section, shall be held by him, subject to the order of the president of the proper district, and shall be paid over accordingly.

ARTICLE VII. MISCELLANEOUS PROVISIONS.

SECTION 1. In all cases where the alteration of school-districts, as provided in this chapter, gives rise to controversy respecting the adjustment of the rights and liabilities of the districts affected, upon which they cannot agree amicably, the matter shall be settled by arbitrators appointed by the county superintendent.

SEC. 2. In all cases where suits may be instituted by or against any of the school officers, contemplated or created by this chapter, to enforce any of the provisions herein contained, counsel may be employed if necessary, by the officer instituting the suit; and the expense of suit shall be borne by the district, county, or territory, in whose name or against whom the same may be instituted.

SEC. 3. All fines, penalties and forfeitures provided by this chapter, may be recovered by action of debt, in the name of the people of the territory of Colorado, for the use of the proper school-district or county, and shall, when they accrue, belong to the respective districts or counties in which the same may be incurred; and the district treasurers for their districts, and the county commissioners of their counties, are hereby authorized to receive and apply the proceeds of such forfeitures as the interest of the permanent fund is now or may hereafter be applied.

SEC. 4. The clear proceeds of all fines collected within the several counties of this territory for breaches of the penal laws, and all funds arising from the sale of water-crafts, lost goods and estrays, shall be paid over in cash, by the person collecting the same, within twenty days of the collection, to the county superintendent of the county in which the same have accrued, and shall be by him apportioned to school-districts, as provided in this chapter.

SEC. 5. Any officer or person collecting or receiving any such fines, forfeitures, or other moneys, and refusing and failing to pay over the same as required by law, shall forfeit double the amount so withheld, and interest thereon at the rate of five per cent. per month, during the time of so withholding the same.

SEC. 6. All funds arising from a breach of the penal laws shall be kept and apportioned separate and apart from all other school-funds.

SEC. 7. Each and every officer created by the provisions of this chapter, who shall receive, by virtue of his office, any books or papers, and shall refuse to deliver the same to his successor in office, or shall wilfully mutilate or destroy the same, or any part thereof, shall be liable to a fine of not less than fifty nor more than three hundred dollars, to be recovered, with damages, on their respective official bonds.

SEC. 8. Every county superintendent of common-schools in this territory shall be allowed five dollars per day, out of the county treasury of his county, for the time actually spent in the performance of his duties, in addition to other expenses incurred in purchasing books, stationery, &c., necessary to said office; an account of which shall be made out by him quarterly and signed and sworn to, and laid before the county commissioners at their regular meetings, who, after examining the same, if found correct, shall issue, on the county treasury, warrants for the amount due.

SEC. 9. Every teacher of common-schools, employed under the provisions of this chapter, shall keep a schedule of the names of all the scholars attending such school, the number of days each scholar attends, and the aggregate number of days of attendance at such school, with a certificate attached thereto, that said schedule is in all its specifications true and correct; which schedule and certificate he shall deposit with the district secretary, at the expiration of the term of said school.

An act to provide for the Printing of the Common-School Law.

[*Approved January* 10, 1868.]

Be it enacted by the Council and House of Representatives of Colorado Territory:

SEC. 10. (I.) That the secretary of the territory be and is hereby authorized to cause five hundred copies of the common-school law printed in pamphlet form.

SEC. 11. (II.) That on the publication of the law, as provided in section one of this act, it shall be the duty of the superintendent of common-schools to forward to the county superintendent of each county, one copy for each district in said county.

SEC. 12. (III.) That the sum of two hundred dollars be appropriated out of any funds not otherwise appropriated, to pay for the printing of the common-school law, or so much thereof as may be necessary.

SEC. 13. (IV.) The common-school law shall take effect and be in force from and after its publication as herein provided for.

Prior Statutes Repealed. An act to establish the Common-School System. Approved November 7, 1861. Laws 1861, p. 154.

An act to legalize the acts of the Superintendent of Common-Schools, and to provide for filling vacancies in said office. Approved March 10, 1864. Laws 1864, p. 132.

An act to amend an act entitled An act to establish the Common-School System. Approved February 10, 1865. Laws 1865, p. 101.

An act to amend an act entitled An act to establish the Common-School System. Approved January 10, A. D. 1867. Laws 1867, p. 85.

An act to create a Fund for the Benefit of Schools.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That hereafter, when any new mineral lode, of either gold-bearing quartz, silver, or other valuable metal, shall be discovered in this territory, one claim of one hundred feet in length on such lode, shall be set apart and held in perpetuity for the use and benefit of schools in this territory, subject to the control of the legislative assembly.

SEC. 2. It shall be the duty of any person or persons making such discovery to leave vacant, claim number three, on such lode, in the direction from the discovery which he or they may designate, and inform the recorder of the county in which such lode may be situated, who shall record the same free of charge, "for the benefit of schools."

SEC. 3. If the person or persons making such discovery neglect or refuse to designate the direction of such claim, the recorder shall record the same as in his discretion he may think proper.

SEC. 4. The recorder of the county shall, upon such record being made, deliver to the county superintendent of common-schools a certificate of record, in the same manner as to individuals in like cases.

SEC. 5. The county superintendent of common-schools shall have the supervision and control of all claims so taken, and shall annually report the number of such claims, and on what lodes they are situated, to the territorial superintendent of schools, whose duty it shall be to recommend to the legislative assembly such regulations as he may deem necessary for renting or working the same.

Approved August 15, 1862. Laws 1862, p. 95.

An act supplemental to an act entitled An act to create a Fund for the benefit of Schools. Approved August 15, A. D. 1862.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That all persons who have heretofore pre-empted upon the records of any county in this territory, or jumped or trespassed upon, or illegally attacked, or interfered with the title to any claims set apart and duly recorded for the benefit of schools, under and by virtue of an act, to which this act is supplementary, entitled An act to create a fund for the benefit of schools, approved August 15, 1862, who shall not have relinquished upon the records of the county in which said claim or claims are situated, all assumed or pretended right, title and interest in and to the same, and who shall not have surrendered the possession thereof on or before the first day of June, A. D. 1866, and all persons who shall hereafter pre-empt, jump, or otherwise trespass upon, or illegally attack or interfere with the title to any such mining claim or claims, shall be deemed and held guilty of misdemeanor, and shall be proceeded against by an indictment to be found by the grand jury of the county in which the offence may be committed, and upon conviction of said misdemeanor, shall be fined in a sum not less than fifty dollars, nor more than ten thousand dollars, and shall also be subject to a civil action for damages, as hereinafter set forth. The vendees and lessees of all persons guilty of the acts herein denominated misdemeanors, claiming to hold any such claim or claims, by or through such person or persons so guilty of a misdemeanor or misdemeanors as aforesaid, shall be held amenable to all the provisions of this act, applicable to the person or persons guilty of the misdemeanor or misdemeanors as aforesaid, and may be proceeded against in the same manner and with like effect.

SEC. 2. That the county superintendents of schools in each and every county of the territory where mineral lodes of gold-bearing quartz, silver, or other valuable metal have been, or may hereafter be found, are, in addition to the powers given here, and duties imposed on them by an act entitled An act to create a fund for the benefit of schools, approved August 15, A. D. 1862, empowered, authorized and required to do and perform the matter and things hereinafter set forth.

SEC. 3. Said county superintendents of schools shall, in their respective counties, carefully inquire into the condition of the school-claims mentioned in the act to which this act is supplemental, and whether the same have been pre-empted by individuals on the record, jumped or trespassed upon, or the title to said claims illegally attacked or interfered with; and if any such school-claims have been pre-empted by any person or persons, on the record of any county in which said claim or claims may lie, or the same has been jumped or trespassed upon, or the title thereto illegally attacked or interfered with, and the person or persons so pre-empting, jumping, trespassing upon, attacking or in any way interfering with said claims as aforesaid, shall not, on or before the first day of June, A. D. 1866, relinquish upon the record of the county in which said acts may be done, and surrender the possession thereof, also all assumed or pretended right, title and interest to any such school-claims as should or do belong to the school-fund by virtue of the act to which this act is supplemental; and further, if in the future any such school-claim or claims shall be pre-empted, jumped or trespassed upon, or the title of the same illegally attacked, or trespassed with, by any person or persons, then in every such case the aforesaid county superintendents of schools, in their respective counties, are hereby authorized and required to present to the grand jurors of their respective counties, for indictment, the person or persons so offending, and shall also proceed in their official character and name, to the use and for the benefit of the schools of said territory, against such person or persons, in an action of trespass, or of case, as may be deemed most suitable, for all loss and damage that may have been sustained. And if in any such civil action the issues are found against the defendant or defendants, and damages are assessed by the jury, the court shall, in all such cases, render judgment against such defendant or defendants for three times the amount of damages so assessed.

SEC. 4. The county superintendent of schools in each of the counties mentioned in the second section of this act, shall annually present to the board of county commissioners of their respective counties, and at their first meeting after the general election, a schedule of all the claims so set apart, not previously rendered, as aforesaid, for the benefit of schools, and upon the recommendation of the county superintendents of schools, the county commissioners shall fix the price or sum of money for which each of the said claims may be sold or leased, and upon the fixing of the several amounts for which said claims may be sold or leased as aforesaid, the said county superintendents of schools, shall, in their respective counties, proceed as county superintendents of schools, having the superintendence and control of said claims, to sell or lease as the case may be: *Provided, however*, That the term of the lease shall not exceed six years without renewal; and further, it shall be the duty of the county superintendents of schools, in the execution of each and every lease, to take good personal securities from each of the lessees, for the faithful payment of the sums mentioned in the lease, said amount to be paid semi-annually. And further, should a sale at any time be made of any of the aforesaid school-claims, the county superintendents of schools, in the respective counties in which said claim or claims are located, are hereby authorized and empowered to make the transfer, by signing the deed in their official capacity, and said transfer so executed, shall constitute a true and valid deed.

SEC. 5. Each county superintendent of schools, before leasing or selling any of the school-claims aforesaid, shall enter into a bond to the territory of Colorado, the penalty thereof to be fixed and approved by the board of county commissioners of his county, conditioned that the said county superintendent of schools shall faithfully comply with the provisions of this act, collect, and after such collections, preserve the money accruing from the civil actions aforesaid, and the sale of claims or leases aforesaid, until the same is appropriated by the proper authority, or his term of office expires, and upon such appropriation or the expiration of his term of office, shall promptly pay over such money so appropriated, and the residue thereof, if any, to his successor in office, and vouchers for all sums of money paid out by any such county superintendent of schools under and by this act, shall be credited to said county superintendent of schools as so much cash. He shall also be credited with the amount of his compensation, hereinafter specified.

SEC. 6. To carry out the provisions of this act, the several county superintendents of schools aforesaid, are authorized to employ at a just and equitable compensation, one or more attorneys, not to exceed three, to conduct all suits in court accruing out of or under the provisions of this act; and said attorneys shall be paid out of the territorial school-fund, upon the presentation to the proper officer of a certificate from the county superintendent of schools who employed them, or the successor of such county superintendent, that the sum claimed by said attorney is justly due.

SEC. 7. The several county superintendents of schools aforesaid, shall each of them receive as a compensation for the services in the matter aforesaid, for each year's services, ten per cent. on all sums collected or received by them from the fines, leases, or damages for trespass as aforesaid: *Provided, however*, The compensation accruing therefrom, does not exceed $3,000, in case of which the overplus shall accrue to the general school-fund.

SEC. 8. Nothing in this act shall be so construed as to prevent the filing and prosecution of suits in the nature of information in chancery, brought by the proper authority, to secure and protect said claims, nor shall this act in anywise invalidate or affect suits already brought by information or otherwise.

SEC. 9. Every county recorder who shall wilfully neglect or refuse to record any claim set apart for school purposes, as provided by law, or who shall record a jumper's so-called pre-emption, shall be subject to a fine of not less than five hundred dollars, nor more than five thousand dollars, such fine to go to the school-fund.

SEC. 10. Any conveyance or sale of school-claims, except as provided in the foregoing sections, shall be unlawful, and therefore null and void.

SEC. 11. This act to take effect and be in force from and after its passage.

Approved January 23, A. D. 1866. Laws 1866, p. 78.

An act supplemental to an act entitled An act supplemental to an act entitled An act to create a Fund for the benefit of Schools, approved August 15, 1862, approved January 23, 1866, and to amend the same.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. The county superintendents shall pay over to the territorial treasurer all funds arising from the sale or lease of mining-claims, under an act to which this is supplemental, who shall invest the same in United States bonds for the use of the school-fund, the interest arising therefrom to be paid by the treasurer to the county superintendents of the several counties, as hereinafter provided.

SEC. 2. The superintendent of public instruction shall make an equal distribution of the school-funds among the several counties, on the first Monday in March, according to the aggregate number of the days' attendance in the several counties, as reported by the county superintendent of each county, who shall make report of the same, at least two weeks before the first Monday in March, in each year, to the superintendent of public instruction.

SEC. 3. The district secretary shall, on the first Monday of February, in each year, submit a report to the county superintendent for the year past, then ending, of the number of schools taught in such district, the number of scholars attending said schools, the number of days each scholar attended the same, and the aggregate number of days of attendance of said schools, respectively, as certified by the teachers of the several schools of such district.

SEC. 4. Every teacher of common-schools, employed under the provisions of An act to establish the common-school system, shall keep a schedule of the names of all the scholars attending such school, the number of days each scholar attends, and the aggregate number of days of attendance at such school, with a certificate attached thereto, that said schedule is in all its specifications true and correct, which schedule and certificate he shall deposit with the district secretary, at the expiration of the term of said school.

SEC. 5. That section five of an act to which this act is supplemental, be amended by striking out all the words between the word "same," in the seventh line of said section, and the word "and," being the third word from the end of the tenth line, in said section, and insert the words "shall be invested by the proper authority in United States bonds," in lieu thereof.

SEC. 6. The treasurer shall keep a separate list of all colored persons in the district, between the ages of five and twenty-one years, according to the provisions of the act to which this act is supplemental, and shall report the same to the president, who shall issue warrants on the treasurer in favor of such colored persons, *pro rata*, for educational purposes.

SEC. 7. That section four of an act supplemental to an act entitled An act to create a fund for the benefit of schools, approved January 23, A. D. 1866, shall be, and the same is hereby amended by adding thereto the following: *Provided*, That the superintendent of public instruction shall first approve such transfer or conveyance.

SEC. 8. That section thirteen of an act entitled An act concerning mines and minerals, passed at the present session of the legislative assembly, shall be amended by adding thereto the following: *Provided*, That such transfer or conveyance shall first be approved by the territorial treasurer.

SEC. 9. This act to take effect and be in force from and after its passage.

Approved February 9, A. D. 1866. Laws 1866, p. 82.

An act to amend an act supplemental to An act to create a Fund for the benefit of Schools, approved January 23, 1866, and an act supplemental thereto, and for other purposes.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That in all cases where school-claims have been heretofore appraised by two commissioners of the county wherein such claims are situated, that said appraisements be and the same are hereby declared as legal and as valid as if such claims had been appraised by all of the county commissioners, whether the same were appraised at the first annual meeting of such commissioners, or at any other time or place.

SEC. 2. That it shall be lawful for any two of the county commissioners to appraise school-claims, at any time when requested so to do by the county superintendent of schools.

SEC. 3. That section seven of the act approved January 23, 1866, entitled An act supplemental to an act entitled An act to create a fund for the benefit of schools, be amended by inserting after the word "leases," in the fifth line, the words "sales of school-claims," and in the eighth line of said section, by striking out "$3,000," and inserting "$1,000."

SEC. 4. This act shall apply to the compensation of all school superintendents who have been duly commissioned and sworn prior to the passage of this act.

SEC. 5. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved January 10, A. D. 1867. Laws 1867, p. 95.

CHAPTER LXXVIII.

SEAL.

Territorial seal to be as heretofore used; inscription.

The seal of this territory shall be the same as heretofore adopted and used, to wit:[1] Two and a half inches in diameter, with the following device inscribed thereon: An heraldic shield, bearing in chief, or upon the upper portion of the same, upon a red ground, three snow-capped mountains, above surrounding clouds; upon the lower part thereof, upon a golden ground, a miner's badge, as prescribed by the rules of heraldry; as a crest, above the shield, the eye of God, being golden rays proceeding from the lines of a triangle; below the crest, and above the shield, as a scroll, the Roman fasces, bearing upon a band of red, white and blue, the words, "Union and Constitution"; below the whole, the motto, "*Nil sine Numine*"; the whole to be surrounded by the words, "*Sigillum Territorii Coloradensis*," and the figures "1861."

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(1) See A joint resolution relative to a territorial seal. Approved November 6, 1861. Laws 1861, p. 514.

CHAPTER LXXIX.

STATUTES.

SECTION
1. General rules of construction; meaning of particular words.
2. Act repealed not revived by repeal of repealing act.
3. General terms and provisions to be construed liberally.

SECTION
4. Statutes not otherwise specifying, go into effect upon their passage.
5. Statutes how published.
6. Style of enacting clause.

SECTION 1. In the construction of all statutes, the following rules shall be observed, unless such construction shall be manifestly inconsistent with the intent of the legislature, or repugnant to the context of the same statute, that is to say: *First*, All words and phrases shall be understood and construed according to the approved and common usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning, shall be construed and understood according to such peculiar and appropriate meaning.

Second, Every word importing the singular number only, may extend to and be applied to one person or thing, or to several persons or things; and every word importing the masculine gender only, may extend to, and be applied to females as well as males. *Third*, The words "insane person" shall be construed to include every idiot, *non compos*, lunatic, or distracted person. *Fourth*, The word "issue," as applied to the descent, of estate, shall be construed to include all the lawful, lineal descendants of the ancestor. *Fifth*, The words "land," or "lands," and the words "real estate," shall be construed to include lands, tenements and hereditaments, and all rights thereto, and all interests therein. *Sixth*, The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, unless otherwise expressed. *Seventh*, The word "oath" shall be deemed to include an affirmation; and the word "sworn" to include the word affirmed. *Eighth*, The word "person" may extend and be applied to bodies politic and corporate. *Ninth*, The word "town" or "towns" may be construed to include city or cities. *Tenth*, The word "will" shall be construed to mean codicil, as well as will. *Eleventh*, The words "written" or "in writing" may be construed to include printing, and engraving: *Provided*, That, in all cases when the written signature of any person is required by law, it shall always mean the proper handwriting of such person, or in case he is unable to write, his proper mark. *Twelfth*, The word "state," when applied to different parts of the United States, may be construed to include the District of Columbia, and the several territories; and the words "United States" may be construed to include the said district and territories. *Thirteenth*, The term "court" shall, in all necessary cases, be deemed to refer as well to probate judges, and justices of the peace, as to courts of record.

SEC. 2. No act or part of an act, repealed by another act, shall be deemed to be revived by the repeal of the repealing act.

SEC. 3. All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the legislative assembly may be fully carried out.

SEC. 4. Every act which does not expressly prescribe the time when it shall go into operation, shall take effect from and after its passage.

SEC. 5. In the publishing the acts of the legislative assembly, the enacting clause, the signature of the speaker of the house of representatives, the president of the council, and the governor, shall be omitted, but the date of their approval shall be retained.

SEC. 6. All acts of the legislative assembly of the territory of Colorado shall be designated, known and acknowledged in each such act of said territory, as follows: Be it enacted by the council and house of representatives of Colorado territory.

Prior Statutes Repealed. An act concerning the construction of statutes. Approved November 6, 1861. Laws 1861, p. 106.

CHAPTER LXXX.

STOCK.

SECTION
1. Non-residents may herd stock in this territory for one year by payment of fifty cents for each animal so herded, in lieu of all other taxes; moneys so arising, how disposed of; twenty cents only collected on sheep.
2. Non-resident desiring to herd cattle in Territory, to file with recorder of county certificate of the number and description thereof; form of certificate.
3. Recorder to file certificate, and index same; transmit copy to county treasurer; treasurer to enter abstract thereof on tax-list, and collect the tax thereon by sale of stock, if not paid.
4. Fees of county clerk and county treasurer.
5. Penalty for herding cattle in this territory without filing certificate, and paying tax.
6. County commissioners when required to proceed against offenders.
7. If non-resident attempt to remove cattle to evade payment of tax, attachment to issue.
8. Bond not required in such case.
9. Non-resident driving stock from one county to another, not to incur additional tax.

SECTION
10. Importation of Texas cattle forbidden.
11. Penalty for violation of the preceding section.
12. Proceedings for such penalty.
13. Allowing stallions to run at large prohibited; penalty; allowing sheep or hogs to run at large without a herder; penalty.
14. Proceeding to collect fine.
15. In case of stock running at large, and owner unknown.
16. Owner or harborer of dog, killing sheep, liable for damages.
17. Dog found worrying sheep may be killed.
18. Dog habitually wandering from home and out of presence of his master may be killed.
19. Owner of animals infected with any contagious disease, to confine same, or herd them at a distance from other stock.
20. Penalty for failure to confine or herd stock away from others, after knowledge of such infection.
21. Owner liable for damages occasioned by infected stock communicating disease.
22. Fines to be paid to county treasurer for use of schools.

SECTION 1. Any person or persons, being non-residents of this territory, may keep and herd, for grazing purposes, cattle, horses, mares, geldings, mules, asses, or sheep, in any counties, except those especially prohibited by law, for the period of one year thereafter, by first paying to the treasurer of the county wherein the said stock may be kept and herded, the sum of fifty cents for each and every animal so kept and herded in said county, three fourths of which sum of money shall be applied to the use of the county, and the remaining one fourth shall be paid to the territorial treasurer for the use of the territory: *Provided*, That the sum of twenty cents only shall be collected on each and every sheep so kept and herded as aforesaid: *And provided also*, that the said fifty and twenty cents, respectively, shall be in lieu of all taxes upon said animals, whether for county, school, or territorial purposes, during the period preceding the first day of June in each and every year.

SEC. 2. It shall be the duty of every non-resident owner or owners of animals, mentioned in the first section hereof, or his or their agent, desiring to keep and herd stock within any county in this territory, as hereinbefore provided, to set out in a certificate under the hand of said owners, his, her, or their agent, the number of animals, whether neat-cattle, horses, mares, geldings, mules, asses, and sheep, together with the brands, if any, upon the same, and file the said certificate with the recorder of the county in which said animals may thereafter be kept, and herded, which certificate may be in the following form, to wit:

TERRITORY OF COLORADO, }
———County. }

The undersigned, owner (or agent of the owner, as the case may be) of the following described animals, proposes to keep and herd the same for grazing purposes, within the county aforesaid, to wit: (describing the number of animals of each kind respectively, with brands, if any,) from the —— day of —— A. D. 18—, until the —— day of —— A. D. 18—.

(Signed,) ——— ———

Which certificate may be acknowledged before the recorder of the county, by the person executing the same; which acknowledgment indorsed upon said certificate, may be in the following form:

The within certificate was acknowledged before me, this —— day of —— A. D. 18—. ——— ———

Recorder of —— county.

SEC. 3. It shall be the duty of the recorder, upon said certificate being acknowledged and filed, to keep an index of the same in his office for the inspection of all persons, as is now provided by law in similar cases, and within ten days after the filing of the same, to certify a copy of said certificate, under his hand, to the treasurer of the county; it shall be the duty of the county treasurer immediately to enter an abstract of said certificate upon the tax-list of the then current year, in his hands, and to collect the sum of money due and payable from the owner or owners of said animals, his, her, or their agents, within twenty days thereafter, if the same shall not previously be paid, by distress and sale of said stock, or so much thereof as may be necessary to pay the said sum of money, with all costs accruing therefrom, in the same manner as is now provided by law for the annual collection of taxes assessed upon personal property, without any further warrant to him for that purpose; and when said money shall be collected by the said treasurer, he shall credit the same to the territorial, county, school, and road-funds respectively, in the same proportion as other taxes.

SEC. 4. The recorder of the county shall, as county clerk, also charge the amount due on each certificate so filed, to the amount of the annual warrant of county taxes delivered to the county treasurer; he shall receive the sum of one dollar from the person filing said certificate, which sum shall be in full of all fees for his services in each case. The treasurer of the county shall receive the same fees as are now allowed by law for the usual collection of taxes for similar services.

SEC. 5. Any non-resident owner, or owners, of animals specified in the first section of this chapter, his, her, or their agents, who shall keep and herd for grazing purposes, his, her, or their animals, in any county in this territory, without having first filed his, her, or their certificate, acknowledging the same, and paying the amount of money per head, as is hereinbefore provided, shall forfeit and pay the sum of two dollars for each and every head of stock so kept and herded, except sheep, upon which latter named animals shall be forfeited and paid, the sum of one dollar for each and every head thereof; which said sum of money per head shall be collected by an action of debt, in the name of the county in which the said animals were so kept and herded; three fourths of which sum shall be applied to the use of the county, and the remaining one fourth for the use of the territory.

SEC. 6. It is hereby made the duty of the county commissioners, of any county in which any animal, belonging to any non-resident, shall be kept and herded without first having complied with the provisions of this chapter, upon information received of the same from any person or persons, either verbally or in writing, to institute proceedings in the name of the county against such non-resident owner or owners, according to the provisions of the last preceding section of this chapter, in any court of competent jurisdiction; and if the owner or owners of said animals are not known to said commissioners, then, and in that case, it shall be lawful to make the agent of such non-resident owner or owners of said animals, or any person or persons having the care or custody of said animals, the defendant or defendants in said suit, and service of the summons in debt upon such agent or person having the care or custody of said animals, shall be considered and held to be personal service upon the owner or owners of said animals.

SEC. 7. In any case when the non-resident owner or owners, or the agent or person having the care or custody of any animals of such non-resident owner or owners shall, pending proceedings instituted as provided in the last preceding section, drive or move said animals out of the county, with intent to move the same out of the territory, with intent also to evade the payment of the forfeiture provided in section five of this chapter, upon oath in writing being made by one or more commissioners of the county, or other person in behalf of said county, of such removal, and filed with the clerk of the district court of the proper county, the said clerk shall issue an attachment in the same manner as is now provided by law in other cases, to the sheriff of the county in which said animals were so unlawfully kept and herded, directing him to seize said animals, or so many thereof as may be necessary to pay the said sum of money mentioned in the affidavit filed in said case, and all costs and charges, in the same manner as is now or hereafter may be provided in attachments in other cases.

SEC. 8. It shall not be necessary for the county, nor any person or persons in behalf of the county, in such proceedings, to enter into bond and security as is now provided in the chapter concerning attachments; but this provision shall not, in any case, preclude the party injured from prosecuting his action against the county for all costs of said suit, and such damages as shall be awarded against the said county for the wrongful suing out of the said attachment, in cases where the county fails to prosecute the said suit with effect.

SEC. 9. Whenever any non-resident owner or owners of animals, his, her, or their agents, shall desire to drive or remove said stock out of the county in which the same were kept and herded, according to the provisions of this chapter, into any other county of this territory, for grazing purposes, no additional sum shall be charged said owner or owners, his, her, or their agent: *Provided*, Said owner or owners, his, her, or their agent, shall file a certified copy of the certificate filed with the recorder of the county wherein said stock was kept and herded, with the recorder of the county into which said animals may be so driven or removed.

SEC. 10. It shall not be lawful for any person or persons to import into the territory of Colorado, any bull, cow, ox, steer, or cattle, of whatever description, known as "Texas cattle," for the purpose of sale, stock-raising, growing, herding, or feeding, or for any purpose whatever.

SEC. 11. That any person or persons violating the last preceding section, or who shall hereafter have in his possession any cattle of said breed, not imported prior to the first day of May, A. D. 1867, shall, on complaint and conviction thereof, before any justice of the peace or probate judge, be fined in a sum not less than fifty dollars, nor more than two hundred dollars, for the first offence, and upon conviction, for the second offence, not less than one hundred dollars, nor more than three hundred dollars. And every such offender so convicted, whether of a first or second offence, as aforesaid, shall be liable in addition to the penalty above prescribed, to be fined in the further sum of one hundred dollars for every twenty-four hours he or they shall unnecessarily delay or herd said cattle within the limits of this territory.

SEC. 12. Upon complaint made under oath before any justice of the peace, or probate judge of any county, that either of the two preceding sections have been violated, it shall be the duty of such justice or probate judge to issue a warrant, directed to the sheriff or any constable of the county, commanding him to arrest the offender or offenders, and bring him or them before the said justice or probate judge, to be dealt with according to law. And in case of the conviction of such offender, the judgment of the court or justice may be that he be committed to the county jail until the fine assessed be paid; or execution may issue for the amount of such fine, against the goods and chattels of such offender; but in no case shall any such cattle named herein be sold on execution for such fine. In case of the commitment of such offender, he shall be confined in the county jail until the full discharge of the amount of such fine and costs, in the manner provided by section twelve of the chapter concerning justices and constables.

SEC. 13. Any person or persons owning or having in charge any stallion or stallions, more than one year old, who shall permit the same to run at large, he or they shall be fined in a sum not less than twenty dollars, nor more than one hundred dollars, for each and every such offence; and any person or persons owning or having in charge sheep, or hogs, who shall permit the same to run at large without a herder or pasturer, he or they shall be fined in a sum not less than five nor more than ten dollars for each and every offence, and be responsible for any and all damage which they may commit, to be collected in the same manner as in other cases, together with all costs of proceedings; and the animal or animals so found running at large, contrary to this chapter, may be taken and held as security for the payment of such fines, costs and damages.

SEC. 14. If any such stock as described in the preceding section is permitted to run at large, any person may complain, on oath, before any magistrate of any county wherein such stock is running at large, when the magistrate shall immediately proceed to issue a summons requiring the offender to immediately appear before him; and if, after hearing, he shall be satisfied that such stock is running at large, he shall inflict the fine on the offender and assess the damages as prescribed in the preceding section.

SEC. 15. Whenever any stock, as above described, is found running at large, and the owner or person having the same in charge is not known, the persons taking up such stock shall proceed in the same manner as is provided in cases of lost goods and estray stock: *Provided*, That should the owner or owners, or persons having such stock in charge be, at any subsequent time known, he shall be held liable for all damages done by such stock, by suit before any magistrate, as provided in the last section.

SEC. 16. If any dog shall kill or injure any sheep, the owner or harborer of such dog shall be liable for all damages that may be sustained thereby, to be recovered by the party injured before any court having competent jurisdiction.

SEC. 17. It shall be lawful for any person, at any time, to kill any dog which may be found running, worrying, or injuring sheep.

SEC. 18. If the owner of any dog which is in the habit of running from home and wandering about without the presence of its owner, shall refuse or neglect to confine such dog, after due notice given of its wandering habits, it shall be lawful for any person to kill such dog whenever it may be found running about off the premises and away from the presence of its owner.

SEC. 19. Any person or persons who shall be the owner of, or shall have the care and custody of any horse, mare, mules, geldings, asses, neat-cattle or sheep, within the territory, who knows or has reason to know of the existence of any contagious disease among the animals in his possession, or under his care and control, shall immediately remove said infected animals to some suitable or secure inclosure, or shall, after such knowledge of infection, herd the same at some convenient place or places, at least six miles from any ranch or farm settled upon, or the like distance from any herd of animals likely to become infected with such contagious disease.

SEC. 20. If any person or persons being the owner of, or having the care or custody of any animals infected with any contagious disease, after knowledge of, or reason to know of, the existence of any infectious disease amongst the animals owned by him, her or them, or under his, her or their custody or care, shall neglect or refuse immediately thereafter to inclose the same within suitable inclosures, so that such infection may not be communicated to other animals, or shall neglect or refuse to herd the same, as provided in the last preceding section, such person or persons shall be liable to indictment, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and not exceeding one thousand dollars.

SEC. 21. Every owner of any animal or animals mentioned in this chapter, infected with any contagious disease, shall be liable in an action on the case, for all damages sustained by any owner or owners of any animal or animals, to which animal or animals such infectious disease shall be communicated.

SEC. 22. That all fines accruing under the provisions of this chapter, shall be paid into the county treasury, for the use of common-schools for this territory.

Prior Statutes Repealed. An act for the protection of sheep, and to prohibit pasturing the same in certain localities. Approved March 4, 1864. Laws 1864, p. 132.

An act providing for the collection of taxes from non-resident stock-owners. Approved March 11, 1864. Laws 1864, p. 133.

An act to restrain sheep, hogs and stallions from running at large. Approved February 8, 1865. Laws 1865, p. 102.

An act to amend An act providing for the collection of taxes from non-resident stock-owners. Approved January 20, 1866. Laws 1866, p. 85.

An act relative to contagious diseases among cattle and other animals. Approved March 11, 1864. Laws 1864, p. 70.

An act to prohibit the introduction of Texas cattle into Colorado Territory. Approved January 10, 1867. Laws 1867, p. 86.

An act to amend an act entitled An act to prevent the introduction of animals for the purpose of grazing within certain limits. Approved January 27, 1866. Laws 1866, p. 85. See *ante*, p. 478.

Local Statutes. An act to prevent the introduction of animals for the purpose of grazing, within certain limits.

Be it enacted by the Council and House of Representatives, of Colorado Territory:

SECTION 1. That no person shall be allowed to introduce or keep, for the purpose of grazing, any horses, mules, neat-cattle, asses, sheep, or other animals, within the limits of Costilla and Guadaloupe counties, except as hereinafter provided.

SEC. 2. That all persons having or raising such stock or animals as are mentioned in the preceding section of this act, shall keep and pasture the same at a distance of at least six miles from any town, ranch or cultivated land, in said counties, and every owner of such stock, or any person lawfully in charge of the same, who shall violate the provisions of this act, shall upon conviction thereof, before any justice of the peace of said counties, be fined in a sum not less than one dollar nor more than five dollars together with costs of suits.

SEC. 3. Nothing in this act shall be so construed as to apply to the animals that may be kept for private or family use: *Provided*, The owners of such animals comply with the regulations and customs prevailing in the different districts in said counties; nor to those persons who may be travelling with their animals.

SEC. 4. This act to take effect and be in force from and after its passage.

Approved November 6, 1861. Laws 1861, p. 105.

An act to prevent the importation of stock into the Territory of Colorado, for the purpose of grazing.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That from and after the passage of this act it shall not be lawful for any person, not a resident of said territory, to import into the counties of Costilla and Guadaloupe, in said territory, any horses, cattle, sheep, jacks, jennets, goats or hogs, or any of them, for the purpose of grazing, herding or feeding the same, or quartering them upon the public domain, or on the lands of any other person or persons: *Provided*, That this act shall not be so construed as to apply to any person who is the owner or occupant of the land whereon the stock is herded, or to any person who is lawfully engaged in driving or selling stock in said territory.

SEC. 2. *And be it further enacted*, That any person or persons violating any of the provisions of this act, shall, upon conviction thereof, before any court of competent jurisdiction, be fined any sum not less than one, nor more than five dollars, for each head of stock so imported, together with all costs, one half to go to the informant, and the other half to the county, and the party offending required to move the said stock forthwith from said counties.

SEC. 3. *And be it further enacted*, That it shall not be lawful for any resident of the said counties of Costilla and Guadaloupe to contract for the grazing of any of the kind of stock aforesaid, and graze the same in the said counties, under the like penalty, recovered in the same manner and for the same purposes: *Provided*, That this act shall not be so construed as to apply to any person who is regularly engaged in the ranching and grazing business as his occupation.

SEC. 4. *And be it further enacted*, That upon the written application or oath of any person or persons, to a justice of the peace in the county where the offence is charged to have been committed, stating the nature of the offence, it shall be the duty of said justice forthwith to issue his warrant, directed to the sheriff or any constable of the county, commanding him to immediately arrest said person or persons and bring them before him to be dealt with according to law.

SEC. 5. *And be it further enacted,* That all stock found grazing, herded, &c., in violation of this act shall be held liable for the payment of the fine and costs imposed.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved November 6, 1861. Laws 1861, p. 133.

An act to prevent the introduction of stock into the counties of Huerfano, Pueblo, Fremont, Jefferson, Boulder, and Costilla, for the purpose of grazing.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That it shall not be lawful for any person or persons, not a resident of said territory, to import into the counties of Huerfano, Pueblo, Fremont, Jefferson, Boulder and Costilla, in said territory, any horses, cattle, sheep, jacks, jennets, goats or hogs, or any of them, for the purpose of grazing, herding or feeding the same, or quartering them upon the public domain, or upon the lands of any person or persons: *Provided,* That this act shall not be so construed as to apply to any person who is the owner or occupant of the land whereon the stock is herded, or to any person who is lawfully engaged in driving or selling stock in said territory, or to any resident of said counties.

SEC. 2. *And be it further enacted,* That any person or persons violating any of the provisions of this act, shall, upon conviction thereof, before any court of competent jurisdiction, be fined any sum not less than one nor more than five dollars, for each head of stock so imported, together with all costs, one half to go to the informant, and the other half to the county, and the party offending required to move the said stock forthwith from said counties: *Provided,* That this act shall not be so construed as to apply to any person who is regularly engaged in the ranching and grazing business, as his occupation in said counties.

SEC. 3. *And be it further enacted,* That upon the written application or oath of any person or persons to a justice of the peace in the county where the offence is charged to have been committed, stating the nature of the offence, it shall be the duty of said justice, forthwith to issue his warrant, directed to the sheriff or any constable of the county, commanding him to immediately arrest said person or persons, and bring them before him to be dealt with according to law.

SEC. 4. *And be it further enacted,* That all stock found grazing, herded, or feeding in violation of this act, shall be held liable for the payment of the fine and costs imposed.

Approved August 15, 1862. Laws 1862, p. 96.

An act to repeal all laws in relation to the introduction of stock in Conejos county, for the purpose of grazing.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That all laws preventing the importation of stock in the county of Conejos, by non-residents, be and the same are hereby repealed.

SEC. 2. This act shall be in force from and after its passage.

Approved August 15, 1862. Laws 1862, p. 97.

An act for the protection of sheep, and to prohibit pasturing the same in certain localities.

Be it enacted by the Council and House of Representatives of Colorado Territory:

* * * * * * * *

SEC. 4. No herd or flock of sheep numbering more than twenty, shall be kept or pastured for more than one week, within the limits of the cities of Denver or Golden City, or any town or village in either of the counties of Costilla or Huerfano, or either or any of them, or within two miles of either of said cities, towns or villages, and any owner or keeper of sheep, or other person who shall violate the provisions of this section, shall be fined, for the use of the county in which such violation shall take place, the sum of twenty-five dollars for each and every day that any such herd shall be kept or pastured in violation hereof, to be recovered by action instituted by any person, who shall feel himself aggrieved, in the name of the people of the territory of Colorado, and in any court of competent jurisdiction: *Provided,* That this act shall not be construed to prevent the owner of such sheep from herding or pasturing the same on the land of such owner.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 4, 1864. Laws 1864, p. 132.

CHAPTER LXXXI.

SUPREME COURT.

SECTION
1. Term of supreme court held annually, on first Tuesday in July.
2. In case no quorum present, court to stand adjourned from day to day; a quorum of the court may adjourn to any day.
3. Process how tested and returnable; by whom served.
4. Court may prescribe rules of practice, etc.

SECTION
5. Opinions of the court to be given in writing.
6. Court may appoint a reporter; his compensation to be as regulated by law.
7. Causes not disposed of at any term, stand continued.
8. Justices of supreme court not to practise as attorneys.

SECTION 1. There shall be a term of the supreme court held annually at the capital of this territory, commencing on the first Tuesday of July in each year.

SEC. 2. If there shall not be a quorum of the justices of the supreme court, present on the first day of any term, the court shall be, and stand adjourned from day to day, until a quorum shall attend; and said court may, there being a quorum present, adjourn to any day specified, as may be deemed advisable.

SEC. 3. All process issued out of the supreme court, shall bear test in the name of the chief-justice, be signed by the clerk of the court, sealed with its seal, and made returnable, according to law or the rules and orders of the court, and shall be executed by the officer to whom the same is directed.

SEC. 4. The supreme court may, from time to time, institute rules of practice, and prescribe forms of process to be used, and regulations for the keeping of the records and proceedings of the court, not inconsistent with the organic act or laws of this territory.

SEC. 5. The opinion of the justices of the supreme court on any matter pending before it, shall be given in writing and filed with the other papers in the cause; and when the justices are divided in opinion in any case, the final order therein shall state which of the justices agree to it.

SEC. 6. The supreme court shall be authorized to appoint a reporter of its decisions; the compensation of such reporter shall be as may be regulated by law.

SEC. 7. All matters, suits and causes undisposed of at any term of the supreme court, shall stand continued to the next succeeding term.

SEC. 8. No justise of the supreme court shall practise as an attorney at law, or solicitor in chancery, in any of the courts of this territory, nor give advice touching any cause pending or to be brought therein.

Prior Statutes Repealed. An act to prescribe the time of holding the supreme court of Colorado Territory, and to assign districts to the judges of the territory. Approved February 9, 1866. Laws 1866, p. 63.

An act to divide the Territory of Colorado into Judicial Districts, and to provide for the holding of courts in the same. Approved March 5, 1864. Laws 1864, p. 71.

An act concerning the District and Supreme Courts. Approved November 8, 1861. Laws 1861, p. 395.

An act to divide the Territory of Colorado into Judicial Districts, and to provide for the time of holding courts in the same. Approved August 15, 1862. Laws 1862, p. 60.

CHAPTER LXXXII.

SURVEYS.

SECTION
1. Sections how subdivided; fractional quarter-sections how divided.
2. County surveyors may administer an oath to their chainmen and markers.
3. In all surveys, courses to be expressed according to the true meridian; variation of needle to be expressed in the field-notes.
4. County commissioners authorized to procure copies of plats and field-notes of government surveys.
5. Commissioners to procure books, in which to make copies, and fix compensation of person making same.
6. Such copies to be filed in county recorder's office; certified copies, or the originals, to be evidence.

SECTION 1. Whenever a surveyor is required to make a subdivision of a section, as established by the United States survey, he shall proceed as follows: Commencing at either quarter-section corner of the section, he shall proceed to run two lines, respectively, to the opposite quarter-section corners, and, at the point of their intersection, establish a post which shall mark the interior quarter-section corner for that section; any less subdivision shall be made by proceeding in the same manner, all interior posts being established by the point of intersection of lines, bisecting opposite sides: *Provided*, That all fractional quarter-sections shall be so divided as to give to occupants of any part thereof, the quantity of land which shall be held to appertain to such part, at any United States land-office in this territory.

SEC. 2. County surveyors shall have authority to administer an oath, or affirmation, to chainmen or markers, acting under them, faithfully and impartially to discharge their duties as chainmen or markers, as the case may be.

SEC. 3. In all surveys the courses shall be expressed according to the true meridian; and the variation of the magnetic meridian from the true meridian, shall be expressed in the field-notes, with the year, month and day of the same.

SEC. 4. The county commissioners of each county in Colorado territory, are hereby authorized and empowered, whenever they shall deem it expedient and necessary, to employ some competent person, at the expense of the county, to make copies of the original field-notes and plats of surveys of all lands surveyed, or hereafter to be surveyed, by the officers appointed by the general government within their respective counties.

Sec. 2. The said commissioners shall procure the necessary books in which such copies shall be made, and stationery for the purpose aforesaid, and shall, by contract, or otherwise, fix the compensation of the person employed to procure and make such copies of said field-notes and plats, to be paid out of the county treasury, in the same manner as other expenses are paid.

Sec. 6. The said copies of such field-notes and plats, when so made, shall be filed in the office of the county clerk of the proper county, and shall thereafter be a part of the public records of said county; and such records, or copies thereof, certified by the county clerk, shall be evidence in all courts and places.

Prior Statutes Repealed. An act defining the manner of subdividing sections, as established by United States Surveys in Colorado Territory. Approved March 2, 1864. Laws 1864, p. 160.

An act to authorize the County Commissioners of the several counties in Colorado Territory, to procure copies of the original field-notes and plats of surveys of all lands surveyed in their respective counties. Approved February 9, 1865. Laws 1865, p. 69.

CHAPTER LXXXIII.

TOLL–ROADS AND BRIDGES.

Section

1. County commissioners on complaint of twenty-five citizens that any toll-road or bridge is not in good repair, shall proceed to examine bridge or road, and, if found not to be in good condition or repair, to notify corporation, in writing, to put same in repair; if repairs not commenced in five days, or if not completed in reasonable time, county commissioners may take possession of road or bridge, for use of county, or may prohibit company from receiving tolls, until road or bridge put in good condition.

Section

2. Commissioners may put road or bridge in repair, and retain possession thereof, and receive the tolls, until expense of repairs shall be reimbursed with interest, etc.
3. Compensation of county commissioners.
4. If such expense be not reimbursed in two years, county may sell the property at public auction.
5. Corporation may appeal from decision of county commissioners; bond; trial of appeal to be *de novo*.

Section 1. The county commissioners of the several counties of this territory, upon the complaint of not less than twenty-five citizens of either of said counties, to the said commissioners of such county, that any road or bridge, or any part thereof, of any incorporated company, situated in, or through either of which said counties the same may pass, representing to the said commissioners that the said incorporation or company are neglecting or refusing to keep such road or bridge in good and proper repair and condition, it shall be the duty of the county commissioners in the county in which such road or bridge is situated, to proceed forthwith, or within five days, to examine the road or bridge concerning which complaint shall have been made, and ascertain the truth of the facts therein set forth; and if they shall find the matters and things complained of in said petition, or complaint to be true, and that said road or bridge is not in proper condition, according to the nature of the ground and the season of the year in which such examination is made, then it shall become the duty of the said county commissioners to give notice in writing to said corporation or company, to repair or put said road or bridge in good order or condition, in five days, or a reasonable time, and if, in five days, the repairs shall not have been commenced, and in a reasonable time completed, then it shall become the duty of the said county commissioners, and they are hereby authorized, to either take the possession of the said road or bridge, in the name and for the use of the county in which the same is situated, or they may prohibit the said company or corporation from demanding, collecting, or receiving any toll for the use of or passage over the same until the said road or bridge shall be put in proper order or condition, and they authorized to do so, in writing.

SEC. 2. After any road or bridge in either of the aforesaid counties shall be taken as aforesaid, into the possession of either of said counties, it may and shall be the duty of the said county to immediately proceed to put the said road or bridge into proper repair and condition for travel or use, and it may, and is hereby authorized, to keep such possession thereof, and keep it in good and proper repair, and receive the tolls thereof, until the said company or corporation shall fully repay the said county for the repairs so done as aforesaid, after deducting the said tolls so received, together with interest on the money so expended for said repairs, at the rate of two per cent. per month.

SEC. 3. The said county commissioners shall be entitled to receive from the proper counties for their services, five dollars per day, for the time actually and necessarily employed in the discharge of said duties, which said sum shall be charged as the expense of the corporation or company whose property has been taken into custody.

SEC. 4. If the company or corporation whose property has been so taken into the custody or possession of the county as aforesaid, shall not, within two years, reimburse the said county for the said repairs, then the said county may sell the said property at public auction, to the highest bidder, after giving sixty days' notice of such sale, in some newspaper, as sheriffs are required to give notice of sales on execution, and pay any excess of the moneys received from such sales over the said expenditure, to the said corporation.

SEC. 5. If said company or corporation feel aggrieved at the decision of said county commissioners, they shall have the right to appeal from such decision to the district court, upon filing a good and sufficient bond to be approved by the clerk of the district court, conditioned in like manner as provided in cases of appeals from justices of the peace, and conditioned further for keeping such road in good repair, and for all damages that may accrue to any person or persons for a neglect to keep such road in good repair during the pendency of such appeal; and said clerk shall thereupon issue a summons as in other cases, directed to said county commissioners, and such appeal shall stand for trial before such court, *de novo*, in the same manner as if such suit had been appealed from a justice of the peace.

Prior Statutes Repealed. An act to regulate private corporations in Jefferson and Clear Creek Counties. Approved January 11, 1867. Laws 1867, p. 50.

CHAPTER LXXXIV.

TOWNS AND CITIES.

SECTION

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1. Upon petition of two thirds of the taxable electors of any town or village, county commissioners of county may declare same incorporated; general powers of corporation.
2. Power to acquire and hold property, real and personal.
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2. Qualifications and term of office of trustees.
3. Oath of office; president of board, when to be chosen.
4. Stated meetings of board to be fixed by ordinance.
5. Majority of board a quorum: a less number may adjourn from time to time and compel attendance of absentees.
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ARTICLE III.—*General Powers of Trustees.*

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1. In addition to board of trustees, town-clerk, town-constable, supervisor of streets.
2. Town-clerk, treasurer of town; town-constable, collector of taxes.
3. Trustees may prescribe duties and compensation of officers, and manner of filling vacancies; may require officers to give bonds; for default may declare offices vacant.

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9. Where two candidates have an equal number of votes, trustees to determine election by lot.
10. Qualification of voters.
11. Election not to be held in place for sale of liquors.

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1. Board of trustees may levy taxes, upon assessed value of property not exempted under the laws of the territory; four mills on the dollar to defray salaries, and ordinary expenses, etc.; two mills on the dollar for repair of streets, etc.; four mills on the dollar to pay interest on the public debt.
2. Trustees may require each male inhabitant

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to labor three days in each year on streets; tax in lieu of labor; tax how collected; set-off not allowed in suits therefor; inhabitants exempt from road-labor beyond town, and from all other road-tax.

3. Ordinances levying taxes, what to specify; two or more taxes may be computed together and collected as one tax.
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5. Return of assessment-list; notice of return, and of time of hearing objections to be given; board of trustees to hear objections and equalize assessment.
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8. Notice of the issuing of warrant, a demand; neglect to pay taxes for twenty days, a refusal.
9. Collector has same power as collector of county and territorial taxes; taxes, how collected.
10. Taxes to be paid to treasurer as soon as collected.
11. Warrant, when returnable.
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13. Upon return of taxes delinquent upon real estate, trustees to make order for sale thereof.
14. Sale to be made as provided by ordinance.
15. Collector to issue certificate of purchase to every purchaser at such sale.
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17. Collector to issue deeds for lots not redeemed; effect of deed as evidence.
18. Where no person bids, lot to be struck off to town.

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1. Expense of repairing streets, alleys, sewers, etc., to be paid by town out of general improvement fund.
2. Expense of constructing street, bridge, sewer, etc., may be paid in whole or in part by a special tax; or the expense may be assessed against the property benefited thereby; how such damages and benefits, and special tax, assessed and collected.
3. Trustees may require owner of lot or block to build sidewalk in front thereof; proceedings in case of default.
4. Manner of condemning lands and assessing the damages due owner thereof, when lands necessary to be taken to open new streets, or to alter, widen, straighten, streets already existing.
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2. Process in such actions.
3. Execution may issue against estate or body of defendant; in certain cases defendant may be committed to jail, or sentenced to hard labor, etc.
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5. Appeals allowed from judgment in such cases, to district court.
6. Residents and property owners within town, not disqualified as judge, juror or witness.
7. Ordinances imposing fine or penalty to be published or posted; in force from first publication; how publication or posting proven.
8. Printed book of ordinances evidence.
9. Report of receipts and disbursements to be published or posted annually.
10. Disincorporation of town how effected; proceedings in such case.
11. Where population of town exceeds three thousand, it may assume a city organization.
12. Additions laid out to towns become a part thereof, and within the municipal jurisdiction, upon the filing of the plat of such addition.

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13. Towns and cities incorporated by special act, may be disincorporated by petition of two thirds of the taxable inhabitants, to the county commissioners, and incorporated hereunder; new town liable for debts of the old; officers to turn over books, papers, etc.

ARTICLE IX.—*Warrants of Towns and Cities.*

1. Where town or city indebted to any person, warrant to be drawn upon treasurer; no more than one warrant to be drawn in favor of same person at same time.
2. No warrant to be drawn in favor of any person except the one to whom money due.
3. Treasurer not to pay warrant unless presented by payee or his executor, &c., or assigns.
4. Penalty for violation of this article.

ARTICLE X.—*Contracts with Aldermen, etc.*

1. Aldermen and trustees not to contract with corporation.
2. Not to receive any money or other thing of value from corporation, except allowed by law; penalty.
3. Aldermen and trustees not to have any interest in any contract with corporation.

ARTICLE XI.—*Of the Survey and Recording of Town-Plat.*

1. When any town or addition laid out, proprietors to cause plat thereof to be made; what plat shall specify.
2. Plat to be acknowledged; copy to be filed with clerk of county, and with clerk of town.
3. County clerk to record plat; certificate upon record thereof; original plat to be preserved.
4. Original plats or the record, or certified copies therefrom, to be evidence.
5. In whom is the fee in the streets of such town.
6. Streets of additions to towns to be extensions of the streets in original town.
7. Penalty for selling lots in any town or city, or addition, etc., before recording plat.
8. How and when plat of town may be vacated; effect of such vacation.

ARTICLE XII.—*Entry of Town-Sites on Public Lands.*

1. Corporate authorities and judges of any county court, having entered any town-site under the act of congress of May 23, 1844, are required to convey the lots, blocks and parcels thereof, as herein specified.
2. Shall convey same respectively to the parties in possession, or who are entitled to possession; parties claiming under others by grant, lease, sale, etc., rights of parties not impaired by any such conveyance.
3. Corporate authorities or judge entering such lands, within thirty days after such entry, to give notice thereof.
4. Claimants of lots, within ninety days after publication of notice, to file a statement of their claim, and description of premises claimed, with judge or corporate authorities, or be forever barred.
5. In case of adverse claimants, either party may bring suit to determine title, on chancery side of the district court, or in any court of competent jurisdiction; judge interested in any adverse claim, not to hear any such cause; change of venue allowed; judge or corporate authorities not parties; cause to be conducted as in chancery; oral testimony may be introduced on trial of cause.
6. Either party may give in evidence the statement of the other; who deemed to have the prior right; evidence to be reduced to writing.
7. Appeals and writs of error allowed to the supreme court.
8. If suits be not brought within sixty days after expiration of time for filing statement, if title be held by any judge, he shall summon parties before him to make their proof and allegations, and shall hear and deter-

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mine same; statement of parties required by section four, to stand as their pleadings; evidence to be reduced to writing; false swearing deemed perjury; subpœna may issue; continuances; fees; appeal allowed from determination; transcript; party summoned and failing to appear, deemed to have relinquished his rights.

9. How adverse claims settled when title held by corporate authorities.
10. If any summons issued hereunder cannot be served, notice may be given by publication as in chancery.
11. Corporate authorities or judges holding title to state the expense of executing trust; same to stand as a lien on lands and lots, and be paid by claimants thereof, in proportion to quantities or shares claimed by them.
12. Corporate authorities or judge not required to execute deed until payment by claimant of such proportion of such expenses; *proviso*.
13. After expiration of ninety days from publication of notice, as required by section three, corporate authorities or judge required on payment of the proportion of expense, etc., as mentioned in section twelve, to execute to each claimant a deed of lot claimed by him, according to the statement made by him pursuant to section four; *proviso*, no such deed to be executed for any lot to which there are adverse claimants.
14. By whom deed to be executed; seal.
15. Judge entering town-site, and entitled to any lot or lots as occupant under this act, invested with title in fee discharged of such trust; adverse claims to be settled as in other cases.
16. Corporate authorities or judge deemed to hold lands in trust from time of entry thereof.
17. Costs in actions mentioned in this chapter, and in proceedings before judge, recoverable as in civil actions.
18. Judge to convey to the legal authorities the lands laid out as parks, streets, etc.
19. In case of entry by corporate authorities, such lands laid out as streets, lanes, etc., shall be held by corporation absolutely.
20. Claimant to lands entered by corporate authorities, within three months after publication of notice, as provided by section three, to tender to corporate authorities the sum of money chargeable thereon, or be barred, etc.
21. Probate judges to be deemed county judges.

ARTICLE I. MANNER OF INCORPORATION—CORPORATE POWERS.

SECTION 1. Whenever two thirds of the taxable electors of any town, or village, in this territory, shall present their petition to the county commissioners of the county wherein such town, or village, is situate, setting forth the metes and bounds of such town, or village, and the name whereby such inhabitants desire to be incorporated, and praying for the incorporation of such village, or town; and the commissioners shall be satisfied that two thirds of the taxable inhabitants of such village, or town, have signed such petition, such county commissioners may, by an order, to be entered of record, declare such village, or town, incorporated. Such order shall in every case designate the name of such village, or town, and the metes and bounds thereof; and from thenceforth the inhabitants within such metes and bounds, shall be a body politic and corporate, by the name of "The town of ——," and by that name they and their successors shall be known in law, have perpetual succession, unless disincorporated, may sue and be sued, plead and be impleaded, defend and be defended, in all courts, and in all actions, suits and matters whatsoever, and may have and use a corporate seal, and alter the same at pleasure.

SEC. 2. Every town incorporated under the provisions of this chapter, shall have power to purchase, receive, hold, lease and convey all property, real and personal, necessary or proper to carry out the purposes of such incorporation, within or without the limits of the town.

SEC. 3. Every conveyance of real estate to such town, shall be to the town, by its corporate name; conveyances by such town shall be executed by the president of the board of trustees, with the advice and assent of such board, at some regular meeting thereof.

ARTICLE II. BOARD OF TRUSTEES.

SECTION 1. The corporate powers of every such town shall be vested in a board of trustees. The first board of trustees shall be appointed by the board of county commissioners, upon declaring such town incorporated, who shall continue in office until their successors are elected and qualified; and such successors shall be elected by the qualified electors residing in such town, on the first Monday of April, in each and every year. The board of trustees of every town shall consist of five members; or if the population thereof exceed fifteen hundred, of seven members.

SEC. 2. No person shall be a trustee who shall not, at the time of his election, have attained the age of twenty-one years, who shall not be a male citizen of the United States, who shall not be a householder residing within the town at the time of his election, and reside therein for one whole year next preceding; and every trustee shall hold his office for the term of one year (except the members of the board first appointed), and until his successor is elected and qualified.

SEC. 3. Every trustee, before entering upon the duties of his office, shall take and subscribe the oath of office prescribed by law; and every board of trustees shall assemble within twenty days after their appointment or election, and choose a president from among their number.

SEC. 4. The board of trustees shall, by ordinance, fix the time and place of holding their stated meetings, and may be convened at any time by the president.

SEC. 5. At all meetings of the board, a majority of the trustees shall constitute a quorum for the transaction of business; a less number may adjourn from time to time, and may compel the attendance of absent members, in such manner and under such penalty as the board may, by ordinance, have previously prescribed. No such adjournment shall be to a day beyond the next stated meeting of the board.

SEC. 6. The board of trustees of every town incorporated in pursuance of this chapter, shall judge of the elections, qualification and returns of its own members; they may prescribe rules for the government of their own proceedings; may punish any member, or other person, for disorderly conduct at any meeting of the board, by fine not exceeding twenty dollars, and by imprisonment until payment of such fine; and with the concurrence of four trustees, may expel any member, but not a second time for the same cause. They shall cause to be kept by their clerk a journal of their proceedings, and a record of all ordinances adopted, and at the desire of any member shall cause the ayes and nays upon any question before them to be taken and entered upon their journal; all proceedings of every such board of trustees shall be public.

ARTICLE III. GENERAL POWERS OF TRUSTEES.

SECTION 1. The board of trustees of every such town shall have control of the finances, and all the property, real and personal, belonging to the corporation; and shall likewise have power within the limits of the town: *First*, To erect, purchase or lease, necessary buildings for the purposes of the corporation. *Second*, To appropriate money, and provide for the payment of the debts and expenses of the city. *Third*, To have and exercise exclusive control over the streets, alleys, avenues, and sidewalks of the town; to give names to the same, and change the names thereof; to prevent the encumbering thereof, and to abate, remove and punish all encumbrances and obstructions thereon; to widen, extend, straighten, regulate, grade, clean, or otherwise improve the same; to open, lay out and improve new streets, avenues and alleys; to vacate any street, avenue, alley or sidewalk, in such town, and abolish the same; and to protect the same from encroachment and injury. *Fourth*, To erect and maintain bridges, culverts, sidewalks and cross-ways; to prevent and punish injuries thereto, or obstructions thereon. *Fifth*, To construct, maintain, and keep in repair, sewers and drains; to prevent and punish any obstruction thereof, or in any way, thereto; to change the channels of natural watercourses, to wall the same and cover them over, and to regulate the same as sewers; to prevent and punish the filling up, altering or changing any such natural watercourses by private persons; to regulate and require the bridging of all mill-races, irrigating, and other ditches, at the crossing of public highways, by the owners of such mill-races, and ditches. *Sixth*, To provide the town with water, construct public wells, cisterns and reservoirs in the streets, and other public or private places within the town, or beyond the limits thereof; to supply the same with proper pumps and conducting pipes or ditches. *Seventh*, To provide regulations for the prevention and extinguishment of fires; to prevent the erection of wooden buildings within prescribed limits; to regulate the construction of chimneys, furnaces and fire-places; to regulate the storage of gunpowder, gun-cotton, nitro-glycerine, tar, pitch, resin, and other combustible or inflammable materials, and to prescribe the places and manner of storing the same. *Eighth*, To provide for lighting the streets, and other public places, of the town; to exclusively regulate and control the laying and repairing of gas-pipes and their appurtenances therein. *Ninth*, To provide for inclosing, improving and protecting the public grounds and cemeteries of the town; and to direct and regulate the planting of ornamental and shade-trees in such public grounds, and in the streets and avenues of the town. *Tenth*, To establish markets and market-houses for the town, and to regulate the same. *Eleventh*, To establish and maintain one or more hospitals within or without the limits of the town, and to provide regulations therefor. *Twelfth*, To establish and maintain necessary cemeteries and burial-places for the town, beyond the limits thereof; to regulate the burial of the dead; to require a registration of deaths and births; and to impose penalties upon physicians and surgeons for any default in the premises. *Thirteenth*, To establish and regulate the police of the town; to appoint watchmen and policemen, and remove the same, and prescribe their powers and duties. *Fourteenth*, To prevent, suppress and punish, any riot, rout, affray, disorderly noise, or disturbance, in any public or private place within the town. *Fifteenth*, To prevent, suppress and punish horse-racing, or immoderate riding or driving, in the streets. *Sixteenth*, To prohibit and punish the rolling of hoops, flying of kites, or other amusements or practices tending to annoy or obstruct persons passing upon the streets or sidewalks, or to frighten horses or other animals being ridden or driven thereon; to restrain and punish the ringing of bells, blowing of horns, crying of goods, and other noises, performances and practices, tending to the collection of persons upon the streets or sidewalks, to the obstruction thereof. *Seventeenth*, To prohibit the roaming at large of horses, cattle, swine, sheep, goats, and geese, within the town; to authorize the impounding and summary sale thereof, when found roaming at large contrary to ordinance; to impose penalties upon the owners thereof for a violation of any ordinance in relation thereto; to regulate, restrain and prohibit the running at large of dogs, to authorize their destruction when at large contrary to any ordinance of the town, and to impose penalties upon the owners thereof. *Eighteenth*, To license, tax and regulate, or prohibit and suppress, the selling and giving away of intoxicating or malt liquors; to punish the selling, or giving away, of any such liquors, by any person, contrary to the ordinances of the town. *Nineteenth*, To license, tax and regulate billiard-tables and ball-alleys; to suppress and prohibit gambling-houses, bawdy-houses, and other disorderly houses, and to punish the keepers and inmates thereof. *Twentieth*, To license, tax and regulate public shows, circuses, and theatrical and other public exhibitions and amusements. *Twenty-first*, To license, tax and regulate commission-merchants, innkeepers, brokers, money-brokers, insurance-agents, auctioneers, hawkers, pedlers, pawnbrokers, grocery-keepers, and the keepers of ordinaries and other houses of public entertainment. *Twenty-second*, To license, tax, regulate and provide the compensation and fare to be charged by hackmen, draymen, cabmen, omnibus-drivers, porters, runners for cars, stage-coaches and public houses, and others pursuing like occupations. *Twenty-third*, To authorize the town-clerk to issue licenses, to direct the manner of issuing and registering the same, and the fees of the clerk therefor. No license shall be granted for more than one year; and not less than ten nor more than five hundred dollars shall be charged for any license issued in pursuance hereof. *Twenty-fourth*, To provide for the inspection and measurement of fire-wood, stone-coal and charcoal, to be used and sold within the town, and regulate the place for the sale of the same. *Twenty-fifth*, To provide regulations to prevent the introduction of contagious or infectious disease within the town; to make quarantine laws, and enforce the same within the town, and in all places within two miles thereof. *Twenty-sixth*, To define, abate and remove nuisances, and punish the authors thereof; to compel the owner or any occupant of any house or premises, to cleanse the grounds, stables, alleys, streets and walks appurtenant and adjacent thereto; to prohibit within the limits of the town, and to the distance of two miles beyond the limits thereof, distilleries, slaughter-houses, tanneries, soap-factories, establishments for the steaming or rendering of tallow, lard or offal, and all other establishments and places where any nauseous, offensive or unwholesome business may be carried on. *Twenty-seventh*, To do all other acts, and prescribe all other regulations, which may be necessary or expedient for the prevention or suppression of disease. *Twenty-eighth*, To establish and maintain a work-house or house of correction, and to make regulations for the government thereof; to appoint the necessary keepers and officers thereof; to provide for the confinement of vagrants, strollers and persons leading an idle and dissolute life, and all persons who refuse to pay any fine, penalty, or costs of the collection thereof, for the breach of any ordinance of the town. *Twenty-ninth*, To authorize the arrest and punishment of vagrants, stragglers and idle and disorderly persons found loitering or strolling about in public places, or where liquor is sold, leading an immoral or profligate life, and to authorize the confinement of any such person in the work-house, or house of correction, for a period not exceeding three months. *Thirtieth*, To direct and control the laying and construction of railroad tracks, bridges, switches and side-tracks, in the streets, alleys and other public places of the town; to require the same to be so laid and constructed as to interfere as little as possible with the ordinary travel and use of the streets and other public places; to authorize the construction of tramways and horse-railways in the town, and to regulate the operation thereof, and the fares to be charged thereon; to require the proprietors of all such railroads and horse-railroads to keep in repair the streets wherein the same may be laid, and to construct and keep in repair all bridges, culverts, cross-ways, ditches and sewers, which the trustees of the town may deem necessary; to regulate the speed of locomotive engines within the limits of the town. *Thirty-first*, To levy taxes as hereinafter mentioned. *Thirty-second*, To apply any surplus money in the treasury to the town, to the extinguishment of the debt of the town, or to the creation of a sinking-fund for that purpose. *Thirty-third*, To make, and from time to time amend or repeal, all ordinances necessary or proper for the carrying into effect of these or any other powers, which may be vested by law in the corporation, or any department or officer thereof; to enforce the observance of such ordinances, and to punish violations thereof by fine or imprisonment, or both, and by confinement at hard labor, in the discretion of the magistrate or court before whom a conviction may be had.

ARTICLE IV. OFFICERS—THEIR APPOINTMENT AND DUTIES.

SECTION 1. In addition to the board of trustees, the officers of every town shall be a town-clerk, town-constable, and a supervisor of streets.

SEC. 2. The town-clerk shall be also treasurer of the town, and the town-constable shall be collector of taxes.

SEC. 3. The board of trustees may prescribe the duties and compensation of all officers of the town, and provide, by ordinance, the manner of filling vacancies in such offices. They may require all such officers to give bond for the due discharge of their duties, in such sums, and with such security, as they may direct and approve; and for default of giving such security, may declare any office vacant.

SEC. 4. The board may appoint, from time to time, all officers and agents of the town, whose appointment is not herein provided for, and remove the same.

SEC. 5. The town-clerk, and town-constable, and supervisor of streets, shall be elected annually, at the election held on the first Monday in April; but upon the first organization of the town, the board of trustees shall appoint such officers, who shall continue in office until the election and qualification of their successors.

SEC. 6. The president of the board of trustees shall be the chief executive officer of the town, and shall perform such duties as may be prescribed by ordinance; in case of the absence of the president, the board may appoint one of their number to act in his stead.

ARTICLE V. ELECTIONS.

SECTION 1. The manner of conducting, and voting at, elections of officers of any such town, and contesting such elections, of keeping the poll-lists thereat, canvassing the votes, and certifying the returns, shall be the same, as nearly as may be, as is, or hereafter may be, provided by law, at the general election of county officers.

SEC. 2. At all such elections, the voting shall be by ballot, and the judges and clerks of elections shall take the same oath, and have the same powers, as judges and clerks of elections of county officers.

SEC. 3. The board of trustees shall, at least ten days before each annual election, appoint three suitable persons as judges of elections.

SEC. 4. There shall be but one place of voting at any election held in a town not exceeding two thousand in population.

SEC. 5. The polls shall be kept open from eight o'clock in the morning until six o'clock in the evening of the day of election.

SEC. 6. Upon the closing of the polls, the ballots shall be counted in the manner required, and the returns shall be returned to the clerk within three days; and thereupon the board of trustees shall meet and canvass the same, and declare the result of the election.

SEC. 7. The person having the highest number of votes shall be declared elected, and shall thereupon be duly notified of his election by the clerk. If such person fail to qualify in his office, within ten days thereafter, the office shall be declared vacant.

SEC. 8. In the canvass for the vote for trustees, those persons, equal in number to the number of trustees, having the highest number of votes, shall be declared elected.

SEC. 9. When two or more candidates for the same office, have an equal number of votes, the board of trustees shall determine the election by casting lots.

SEC. 10. No person shall be entitled to vote at any election in any such town, who is not entitled to vote at elections of county officers, and who shall not also have resided for six months continuously preceding such election, in such town.

SEC. 11. No election shall be held in any place where intoxicating or malt liquors are sold.

ARTICLE VI. TAXES AND THE COLLECTION THEREOF.

SECTION 1. The board of trustees of every town shall have power to levy and collect annually, upon the assessed value of the real and personal property within the town, except such as is or may be exempt from taxation under the laws of the territory, in each year, the following taxes: *First*, Not exceeding four mills on the dollar of such assessed valuation, to defray the salaries of officers, and the ordinary and contingent expenses of the corporation, not herein otherwise provided for. *Second*, Not exceeding two mills on the dollar of such assessed valuation, for the purpose of constructing and repairing streets, sewers, sidewalks and cross-walks, or bridges and culverts, upon such streets or sidewalks. *Third*, Not exceeding four mills on the dollar of such assessed valuation, to defray the interest on the public debt of the town.

SEC. 2. The board of trustees may also require every male resident of the town, over the age of twenty-one, and under the age of sixty, to labor three days in each year, upon the streets and alleys of the town; but any person, in lieu of such labor, may pay a tax of not exceeding four dollars for each day's labor required, as may be prescribed by the board of trustees: *Provided*, Such payment be made within ten days after demand of such labor, by the supervisor; in default of payment within such time, the same may be collected, with costs, by an action of debt, in any court of competent jurisdiction, and no set-off shall be allowed thereto. Inhabitants of any such town shall be exempt from the performance of all road-labor beyond the limits thereof, and from all road-tax other than as herein provided.

SEC. 3. Ordinances levying taxes, for any or all of the purposes above specified, shall set forth the purpose for which the same are levied, and the rate levied for each; but in all the proceedings for the collection thereof, any two or more of said taxes may be computed together and collected as one tax; but the aggregate amounts of the several taxes, when collected, shall be set apart to their separate and proper funds.

SEC. 4. The board of trustees may prescribe the form of assessment-lists and warrants for the collection of taxes, or the sale of real estate, and the duties and powers of assessors and collectors of taxes.

SEC. 5. The annual assessment-list shall be made and returned at such time as they may direct by ordinance, but the time for the return thereof may be extended from time to time. On the return thereof, a day shall be set for considering objections thereto, and the clerk shall give notice thereof, as the ordinance may direct. The board of trustees shall, on the day specified, hear and consider all objections which may be urged to any assessment; and for the purpose of equalizing the assessment, may diminish, add to, or increase the same.

SEC. 6. When the revision of the assessment-list is completed, an order shall be entered approving the same; and the board of trustees shall thereupon, by ordinance, order, or resolution, levy such sums of money as may be sufficient for the purposes for which taxes are herein authorized to be levied, not exceeding the rate of taxation before named, specifying the purposes for which the same are levied, and directing a warrant to be issued for the collection thereof.

SEC. 7. The clerk shall issue such warrant, in the form which may be prescribed by ordinance, setting down in a column, or columns, ruled for that purpose, the name of the person, or the description of the real estate subject thereto; the total amount of taxes levied may be computed together, and collected as one tax, in all such warrants, and in all orders of sale and other proceedings for the collection thereof.

SEC. 8. A notice by the collector of the issuing of such warrant, to be posted or published, in such manner as the ordinance of the town may direct, shall be deemed a sufficient demand for all taxes named in such warrant, and a neglect to pay taxes, for twenty days thereafter, shall be deemed a refusal.

SEC. 9. All such taxes may be collected by the collector, in the same manner, and with the same authority, as is given by law to collectors of county and territorial taxes; all such taxes may be collected by distraint and sale of personal property, by suit in the corporate name, in any court of competent jurisdiction, or by sale of the real estate whereon the same may be levied.

SEC. 10. All taxes shall be paid by the collector, to the treasurer of the town, as fast as collected.

SEC. 11. The board of trustees shall, by ordinance, direct at what time the warrant for the collection of taxes shall be returnable; but the time for the return thereof, may, upon their order, be extended from time to time.

SEC. 12. All taxes and assessments whatsoever, levied by any board of trustees, in pursuance of this chapter, upon any real estate, shall be a lien thereon for two years from the levy thereof; and if levied upon any personal estate, or upon any person, on account of any personal estate, named in the assessment, such tax shall be a lien upon such personal estate, from and after the delivery of the warrant for the collection thereof, to the collector, until the return of such warrant. No sale or transfer shall affect such lien: *Provided*, That in case the collection of any assessment is delayed by injunction, or other judicial proceeding, the same shall continue a lien, unless set aside, upon all real estate, for the period of two years after the final disposition of such injunction or other proceeding.

SEC. 13. If, by the return of the collector to any such tax-warrant, it shall appear that any taxes levied upon real estate remain unpaid, an order shall be made by the board of trustees, and entered of record, among their proceedings, describing the delinquent taxes, and the premises whereon the same are assessed, and directing the collector to sell the said premises, or such part thereof as may be necessary to make the taxes and costs thereon; a certified copy of such order, in the form prescribed by ordinance, shall be sufficient authority to the collector to make such sale.

SEC. 14. Every such sale shall be made upon such notice, at such place, and in such manner, as the board of trustees may, by ordinance, provide.

SEC. 15. A certificate of his purchase shall be made and delivered by the collector, to every purchaser at such sale; which shall set forth the name of the purchaser, the description of the premises purchased, the amount of tax, interest and costs, for which the same were sold, and the time when the right of redemption will expire.

SEC. 16. The right to redeem the premises sold, from such sale, shall exist to the owner, his heirs and assigns, in the same manner and to the same extent, as in the case of sales of real estate under the laws of this territory, for territorial and county taxes, by payment of the redemption money to the treasurer of the town.

SEC. 17. Upon the expiration of two years from the date of such sale, unless the same be redeemed, the purchaser or purchasers, his or their assigns, shall be entitled to receive from the collector, for the time being, a deed for the premises sold, in such form as may be prescribed by the board of trustees; and such deed, the provisions of this chapter and of the ordinances of the town being in all things observed in such proceedings, shall have the effect to vest the title to the premises sold, in the grantee therein; and every such deed shall be of the like effect, as evidence, as deeds made for lands sold for the non-payment of county or territorial taxes.

SEC. 18. In case no person shall offer to purchase any lot or premises sold at any such sale for the taxes due thereon, and the interest and costs, the same shall be struck off to the town.

ARTICLE VII. ASSESSMENTS FOR PUBLIC IMPROVEMENTS.

SECTION 1. The expense of repairing the streets, alleys, sewers, drains, sidewalks and bridges of the town, shall be paid by the town, out of the general improvement fund.

SEC. 2. The expense of constructing any street, alley, sewer, ditch for the conveyance of water, or any bridge, may be paid either in whole or in part by a special tax; or the board of trustees may, by ordinance, provide for the assessment of the expenses of such construction against the real estate which may be benefited, or increased in value thereby, may appoint commissioners to make such assessment, and approve their report thereof (but an appeal shall lie from the order of the board of trustees approving any such report, to the district court of the proper county), and provide for the collection of all such assessments by a sale of such real estate. Taxes assessed under the provisions of this section shall not exceed in the aggregate two mills on the dollar in any one year; all such taxes shall be collected in the same manner as other taxes under the provisions of Article VI. of this chapter, and together therewith, or separately, and at other times, as the board of trustees may direct.

SEC. 3. The board of trustees may require the proprietor of any block, lot, or part of lot, within the town, to construct a sidewalk in front thereof, of such width, and construction, as they may direct, and may, by ordinance, provide that upon default of the proprietor to construct such sidewalk, within a time to be prescribed, after notice so to do, the same may be constructed by the supervisor of streets, and the expense thereof assessed against such block, lot, or part of lot; may provide the manner of making such assessment, may approve the same, and provide the manner of collecting such assessments by sale of the premises.

SEC. 4. The board of trustees may, by ordinance, provide the manner and proceeding of condemning and taking any lands, necessary to be taken, for the opening of any new street, avenue, alley, or sewer, or the widening, straightening and extension of those already existing; the manner of ascertaining the damage and recompense due the owner of lands so taken; that the benefits resulting to any lands from such improvement, be assessed against the lands so benefited; may provide the manner of assessing such benefits; may appoint commissioners to make such assessment of damages and benefits; may approve and confirm the reports of such commissioners, and provide by ordinance for the collection of all such benefits by the sale of the real estate whereto the same may be assessed: *Provided*, That an appeal shall lie by the owner of any real estate to be affected, from any order approving such assessment of damages, or benefits, to the district court of the proper county.

SEC. 5. Appeals from any order under this article, shall be perfected by the filing of a bond with the town-clerk, payable to the town and conditioned to abide and perform the judgment which may be rendered on the trial or dismissal of such appeal, and whatever damages may be adjudged to accrue to the town by reason of such appeal; such bond shall be filed within ten days after the entry of the order complained of, and upon the filing thereof the clerk shall certify and transmit to the clerk of the district court, a transcript of the record of the proceedings of the board of trustees, and of all reports, orders, assessments and other papers and proceedings in the premises, having reference to the order complained of.

ARTICLE VIII. MISCELLANEOUS.

SECTION 1. All fines, penalties and forfeitures, which may accrue under the ordinances of any such town, may be recovered by action of debt, before any justice of the peace residing within such town, or if there be none such, then before any justice of the peace of the county, or other court of competent jurisdiction; and the same, when collected, shall be paid into the treasury of the town. It shall be sufficient to declare or complain generally for the same, stating the clause of this chapter, or the ordinance under which the same is claimed.

SEC. 2. The first process in all such actions shall be a summons, or warrant, for the arrest of the offender, as the board of trustees may by ordinance direct.

SEC. 3. Execution may issue against the estate of the defendant, as in other like cases, or against the body, as the board of trustees may by ordinance direct; and in cases when authorized by the ordinances of the town, the judgment may require the party convicted to pay a fine and be imprisoned, or to pay a fine and stand committed to the jail of the county or calaboose of the town, until payment of such fine; or the offender may be confined at hard labor upon the streets or public works of the town.

SEC. 4. No fine shall be imposed exceeding three hundred dollars, nor imprisonment or confinement at hard labor exceeding three months.

SEC. 5. Appeals shall be allowed from the judgment of any justice of the peace, or probate court, in cases arising under this chapter, or the ordinances of any such town, as in other cases.

SEC. 6. No person shall be incompetent as judge, juror, or witness, in any such action, nor in any action to which the town shall be a party, on account of his or her being a resident citizen or property-owner within such town.

SEC. 7. Every ordinance imposing any penalty, fine, forfeiture, or other punishment, shall, after the passage thereof, be published, for at least three insertions, in some newspaper printed within the town, or if there be none such, then by posting in three or more public places within the town; and every such ordinance shall be in force from and after the date of such first publication, or posting; and such publication and posting may be proven by the certificate of the printer or publisher, of the newspaper wherein the same was published, or by the *ex parte* affidavit of the person who posted the same.

SEC. 8. The printed book of ordinances of any such town, printed or published by authority of the board of trustees, or purporting so to be, shall be sufficient evidence of the passage and publication thereof, and of the time when the same became of force.

SEC. 9. The board of trustees shall, at least ten days before the annual election in each year, cause to be published in some newspaper published in the town, or if there be none, then to be posted in three or more public places within the town, a full and correct statement of all moneys received into the treasury of the town since the last report, and the sources from which the same were severally derived; also of all disbursements and expenditures, and the account upon which such disbursement was made.

SEC. 10. The county commissioners of the county wherein any such town is situate, may, upon the petition of two thirds of those persons paying a property-tax within such town, under the provisions of this chapter, in the year preceding, and residing within such town, disincorporate such town, and appoint a trustee with authority to wind up the affairs of the corporation, sell and convey its property, real and personal, pay the debts of the town, and return the surplus of the proceeds of the property of the town, into the county treasury, to be there disposed of for the improvement of roads in the road-district wherein such town is situate.

SEC. 11. When any town shall have acquired a population of three thousand, the inhabitants thereof may, by vote of the board of trustees, assume a city organization, under such name as the trustees may designate; and thereupon the board of trustees may divide such town into wards, not exceeding six in number, and the trustees shall thereafter be elected from such wards, by the inhabitants thereof, respectively, and shall be styled aldermen, instead of trustees; and in addition to the officers herein provided for, there shall be elected a mayor to such city, who shall be the chief executive officer thereof; such city shall have and exercise all the powers herein contained and granted.

SEC. 12. Whenever any territory shall be laid out and surveyed as an addition to any town or city within this territory, whether incorporated under the provisions hereof, or by any special act of incorporation, such territory shall, upon the filing of the plat or map thereof in the office of the county clerk, as required by law, be and become a part of such city or town, and included within the limits and jurisdiction thereof.

SEC. 13. Any town or city heretofore or hereafter incorporated by special act of the legislative assembly, may, upon petition of two thirds of the taxable inhabitants thereof, to the board of county commissioners of the county wherein such town is situate, by order of the board of county commissioners, be disincorporated under the provisions of such special act, and incorporated hereunder, by whatever corporate name such petitioners may designate; in such case the officers of such city or town, in office at the date of such disincorporation, shall turn over to the officers of such town or city, so incorporated hereunder, all books, papers, records, money, and other property pertaining to such town or city, so disincorporated, and the town or city incorporated hereunder shall be liable for all the debts and undertakings of the town or city so disincorporated.

ARTICLE IX. WARRANTS OF TOWNS AND CITIES.

SECTION 1. In all cases in which any city or town in this territory shall be indebted to any person or persons, on any account whatsoever, a warrant or voucher shall be drawn upon the treasurer of such city or town, for the whole amount found due to such person, by the tribunal having power to audit and allow claims against such city or town; and such tribunal shall not, in any case, draw more than one warrant or voucher for the amount allowed to one individual at one time.

SEC. 2. No warrant or voucher, drawn on the treasurer of any city or town, shall be drawn in favor of any other person than the one to whom the same may be due; and such warrant or voucher may be in the form prescribed by ordinance.

SEC. 3. No treasurer of any city or town in this territory, shall pay any warrant or voucher drawn on him, unless such warrant be presented for payment by the person in whose favor such warrant is drawn, or his assignee, or executor, or administrator.

SEC. 4. Any officer or officers of any town or city, who shall be guilty of a violation of any of the provisions of this article, shall be deemed guilty of a misdemeanor in office, and for every such violation shall be fined in a sum not exceeding five hundred dollars.

ARTICLE X. CONTRACTS WITH ALDERMEN AND TRUSTEES.

SECTION 1. It shall not be lawful for any municipal corporation in this territory to make or enter into any contract or agreement with any alderman or trustee of such municipal corporation, whereby any sum of money, evidence of indebtedness, or other thing of value shall be acknowledged to be due, or shall become due, to such alderman or trustee.

SEC. 2. No alderman or trustee of any incorporated town or city in this territory, shall, during the term for which he shall have been or shall be elected, accept, take or receive to his own use, from the town or city of which he shall be an alderman or trustee, any sum of money or other thing of value, other than that which is, by the act incorporating such town or city, provided to be paid to such alderman or trustee, for his services as such alderman or trustee; and every person who shall violate the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined not less than one hundred dollars, nor more than five hundred dollars, the one half thereof to go to the informer, and the remainder to the school-fund of the county in which such town or city shall be located; and he shall also cease to be an alderman or trustee, as the case may be, of such city or town.

SEC. 3. No alderman or trustee of any incorporated city or town in this territory, shall, during the term for which he shall be elected, be interested or concerned in any way or manner, directly or indirectly, in any sale, purchase, bargain, contract or agreement, whereby any sum of money shall become due to such alderman or trustee, from such town or city, or to any person for the use of any such alderman or trustee; and any alderman or trustee who shall violate the provisions of this section, shall be punished as provided in section two of this article.

ARTICLE XI. OF THE SURVEY AND RECORDING OF TOWN-PLATS.

SECTION 1. Whenever any city, town or village, or an addition to any city, town or village, shall be laid out, the proprietors of the city, town or village, or addition, laid out, shall cause to be made an accurate plat or map thereof, setting forth: *First*, All streets, alleys, avenues and highways, and the width thereof. *Second*, All parks, squares, and all other grounds reserved for public uses, with the boundaries and dimensions thereof. *Third*, All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of such lots.

SEC. 2. Such map shall be acknowledged by the proprietor, or some person for him, duly authorized thereunto by deed, before some officer authorized to take the acknowledgments of deeds; and a copy thereof, so acknowledged, shall be filed in the office of the clerk of the county, and also in the office of the clerk of such town or city.

SEC. 3. The clerk of the county shall record all such plats in a book to be kept by him for that purpose, and, when necessary, may reduce the scale of any such plat; and upon each record in the said book, shall indorse his certificate that the same is truly recorded from the original plat filed in his office. Every such original plat shall be preserved by the clerk of the county, and the clerk of the city or town, among the records of their offices respectively.

SEC. 4. All such orignal plats, or the record thereof, or copies therefrom, certified by the clerk having custody thereof, shall be evidence in all courts and places.

SEC. 5. Upon the filing of any such map or plat, the fee of all streets, alleys, avenue, highways, parks, and other parcels of ground reserved therein to the use of the public, shall vest in such city or town, if incorporated, in trust, for the uses therein named and expressed; or if such town be not incorporated, then in the county, until such town shall become incorporated, for the like uses.

SEC. 6. All additions to any city or town shall be so surveyed and platted, that the streets of such addition shall conform to and be extensions of the streets of the original town, in the same direction.

SEC. 7. If any person shall sell, or offer to sell, any lot within any city, town or village, or any addition thereto, before the map or plat thereof is made, acknowledged and filed, as hereby required, he shall forfeit the sum of one hundred dollars, for every lot sold or offered to be sold.

SEC. 8. The proprietor of any city, town or village, or any addition thereto, or his or her heirs or assigns, may, at any time before selling and conveying any lot or part of lot therein, or upon reacquiring all lots and parts of lots which may have been sold, by his or her writing under his or her hand and seal, acknowledged in like manner as deeds are required to be acknowledged, and filed in the office of the clerk of the county wherein such town is situate, declare the plat or map thereof vacant; and such declaration shall have the effect to divest all right of the city, town, village, or county, or the public, in or to any lots or lands within the limits of such plat, and to vacate and annul such map or plat.

ARTICLE XII. OF THE ENTRY OF TOWN-SITES UPON PUBLIC LANDS.

SECTION 1. When the corporate authorities of any town, or the judge or judges of the county court, for any county in this territory, in which any town may be situated, shall have entered at the proper land-office, the land, or any part of the land settled and occupied as the site of such town, pursuant to, and by virtue of the provisions of the act of congress, entitled An act for the relief of citizens of towns, upon lands of the United States, under certain circumstances, passed May 23, A. D. 1844, and any amendments that may be made thereto, it shall be the the duty of such corporate authorities, or judge, or judges (as the case may be), and they are hereby directed and required, to dispose of and convey the title to such land, or to the several blocks, lots, parcels, or shares thereof, to the persons hereinafter described, and in the manner hereinafter specified.

SEC. 2. Any such corporate authorities, or judge, or judges, holding the title of such lands in trust, as declared in the said act of congress, his or their successors, shall, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share, or parcel of the same, to the person or persons who shall have, possess, or be entitled to the possession or occupancy thereof, according to his, her or their several and respective rights or interest, in the same, as they existed in law or equity, at the time of the entry of such lands, or to his, her or their heirs or assigns; and when any share or parcel of such lands shall be occupied or possessed by one or more persons, claiming the same by grant, lease, or sale from one or more other persons, the respective rights and interests of such persons, in relation to each other, in the same, shall not be changed or impaired by any such conveyance. Every deed to be made by such corporate authorities, or by such judge, or judges, pursuant to the provisions of this article, shall be so executed and acknowledged as to admit the same to be recorded.

SEC. 3. Within thirty days after the entry of any such lands, the corporate authorities, or judge, or judges, entering the same, shall give public notice of such entry, by posting notice thereof in at least three public places within such town, and by publishing such notice in a newspaper printed and published in the county in which such town shall be situated, or, in case there shall not be any newspaper published in such county, then in some newspaper printed and published nearest to such town, in this territory. Such notice shall be published once in each week, for at least three successive weeks, and shall contain an accurate description of the lands so entered, as the same is stated in the certificate of entry, or duplicate receipt for the purchase-money thereof, given by the land-officers at the time of such entry.

SEC. 4. Each and every person or association, or company of persons, claiming to be an occupant or occupants, or to have possession or to be entitled to the occupancy or possession of such lands, or to any lot, block, share, or parcel thereof, shall, within ninety days after the first publication of such notice, in person, or by his, her or their duly authorized agent or attorney, sign a statement in writing, containing an accurate description of the particular parcel or parts of land, in which he, she or they claim to have an interest, and the specific right, interest or estate therein, which he, she or they claim to be entitled to receive, and deliver the same to, or into the office of such corporate authorities, judge or judges; and all persons failing to sign and deliver such statement, within the time specified in this section, shall be forever barred the right of claiming or recovering such lands, or any interest or estate therein, or in any part, parcel, or share thereof, in any court of law or equity.

SEC. 5. In case there shall be adverse claimants to such lands, or to any part, parcel or share thereof, either party may bring a suit in chancery against the adverse claimant or claimants, in the district court of the judicial district, or in any court of competent jurisdiction, in the county in which the lands shall be situated, or in any county to which the county in which such lands shall be situated, is attached for judicial purposes: *Provided, always*, That no judge of the district court, or probate judge, who has been an adverse claimant, directly or indirectly, of any portion of the lands embraced within such town, or who is a party to any action brought to determine the right to a conveyance of any portion of the lands within such town, shall entertain, hear or determine any proceeding, interlocutory or final, in any action brought to determine any such claims, by or between any parties whomsoever; but in all such cases, if the cause or proceeding shall be pending in a district court, the judge thereof shall order all papers, with a transcript of the record in the cause, to be transmitted to another judicial district, as in cases of change of venue; and if the cause or proceeding shall be pending in a probate court, the judge thereof shall order all papers, with a transcript of the record, to be transmitted to the probate court of the nearest county, where the causes complained of do not exist, as in cases of change of venue; and the cause shall proceed in the court to which the same is removed, in the same manner as if originally instituted in that court: *Provided, also*, That the laws applicable to a change of venue, shall apply to actions brought under this article: *And provided, also,* That nothing in this article shall prevent the district judge of the district in which any such lands are situated, from executing any and all conveyances of such lands, pursuant to the determination of such action. Suits brought under the provisions of this article, shall be brought against adverse claimants as defendants: and it shall not be necessary to make the judge or corporate authorities holding the trust, parties thereto, except as provided in section nine of this article. The complainant's bill shall show what interest or estate in the lands in controversy the complainant claims, and defendant shall answer such bill as in cases of chancery. Pleadings and proceedings in such actions shall be as in cases in chancery, except that oral testimony may be introduced upon the trial of the cause.

SEC. 6. Upon the trial of any such action, either party may give in evidence the statement mentioned in the fourth section of this article, deposited by the other, or by the person under whom he or she claims, with the corporate authorities, or judge or judges holding the title to the lands in controversy therein; and the person or persons who shall have first acquired the right to the possession or occupancy of such lands, either in person, or by agent, attorney, servant or tenant, or those claiming under him, her or them, shall, in any such action, be deemed to have the prior and paramount right to such lands; and any rule of law or equity which would prevent a determination in accordance with such prior right, shall be disregarded in such action. Upon the trial of any such action, the evidence of the witnesses, if not in the form of depositions, shall be reduced to writing, and being certified by the presiding judge, shall be filed with the papers in the cause: *Provided*, That nothing in this section shall be so construed as to recognize the right of any person or persons, who have virtually abandoned any land held as a town-site, to any title therein.

SEC. 7. Appeals and writs of error shall be allowed, and may be taken and prosecuted from the judgments or decrees of the courts, in proceedings under this article, to the supreme court, as in other cases.

SEC. 8. In case suits shall not be brought, as provided in this article, for the purpose of settling or determining any controversy between adverse claimants to any such lands, within sixty days after the expiration of the time for filing the statement, as provided in section four, if the title to such land shall be held by any judge, it shall be the duty of such judge to summon the adverse claimants to appear before him, at a time and place to be mentioned in such notice, and which place shall be within the county in which such land shall be situated, and make their proof and allegations in reference to such adverse claims. At the time and place of the return of such summons, if the same shall have been served as provided in this article, the judge shall, if the parties appear, proceed to hear their proofs and allegations, and shall thereupon determine, in writing, the controversy between them. Upon such hearing, the statements of the parties respectively, deposited with such judge, as required by the fourth section hereof, shall stand for their pleadings, and either party may use in evidence the statement by the other, or by the person under whom he or she claims. The evidence of the witnesses sworn upon such trial, shall be reduced to writing, and any witness who shall, upon such hearing, wilfully and knowingly testify falsely, shall be deemed guilty of perjury. Any such judge, or justice of the peace, may issue subpœnas to compel the attendance of witnesses upon such hearing, and any person served with such subpœna shall be deemed guilty of contempt of said judge, and may be attached to answer such contempt, and to testify in the case. There shall be no postponement in the hearing of such cases, except for cause. The summons issued by the judge, and all subpœnas issued in such cases, shall be directed and served in the same manner as in actions at law, except that such summons, in case where the person named therein cannot be found, may be served upon the agent or attorney who shall have filed the statement mentioned in section four hereof. The fees of the officers and witnesses in such cases, shall be the same as for like services in actions of court of record. Either party in any such case may appeal from the determination of any such judge therein, to the supreme court, in the same manner that a party may appeal from any judgment in an action at law in the district court. If an appeal shall be allowed, the judge shall transmit to the clerk of the supreme court, a transcript of the statements standing for the pleadings in the case, the evidence and the determination of the judge in writing. In case any party lawfully summoned to appear before such judge, as mentioned herein, shall fail to appear at the time and place mentioned in the summons, he shall be deemed to have waived and relinquished all right, title and interest and estate in the said lands so in controversy, and each and every piece, parcel and share thereof, and shall be forever barred from asserting or claiming any right, title, interest or estate therein.

SEC. 9. If in a case mentioned in section eight of this article, the title to any such lands shall be held by the corporate authorities of any town, such corporate authorities may bring an action in the district court of the judicial district, and in the county in which the lands in controversy shall be situated, or in some county to which such county shall be attached for judicial purposes, to settle and determine such controversy. Such suit shall be commenced on the chancery side of the court, by bill, in the nature of a bill of interpleader, which bill shall set forth a description of the lands claimed by adverse claimants, and the character and extent of the right or interest or estate therein, claimed by each, as the same shall appear by the statements deposited with such authorities, pursuant to section four of this article, and the names of all adverse claimants who shall have filed such statements, and shall pray that the several adverse claimants shall be required to appear in such court and prosecute such claim, or be forever barred therefrom. Any claimant to such land, who shall fail to appear and answer such bill, and thus prosecute his claim to the land described in such bill, pursuant to the summons in such case and the practice of the district court, shall be forever barred of the right to assert any claim or title to the lands in controversy, adverse to the other claimants, their representatives or assigns, elsewhere, or in any court whatsoever. If the adverse claimants to the lands described in the bill, in such case, shall appear, they shall respectively answer to such bill, and either disclaim any right, title, interest or estate, in the land described, or set forth the nature, character and extent of the title, interest or estate which he, she or they respectively claim therein. Issues between such adverse claimants, made by their answers to such bill, may be brought to a hearing, and shall be determined, and such determination may be received by the supreme court, in the same manner and by the same rules of law and evidence, as in other cases mentioned in sections five, six and seven of this article.

SEC. 10. Whenever any summons issued under the provisions of this article, cannot be served upon the person or persons named therein, nor upon the agent or attorney of such person or persons, who shall have filed a statement, as required in the fourth section of this article, and the complainant or judge, as the case may be, shall file an affidavit, as provided in the eighth section of the chapter concerning practice in chancery, it shall be lawful for the judge or the clerk of the court, as the case may be, to cause publication to be made, as provided in said section of said chapter concerning practice in chancery; and when such publication shall have been made, the cause shall proceed as if the parties had been personally served with process.

SEC. 11. As soon as may be after the expiration of sixty days from the first publication of the notice mentioned in the third section of this chapter, the corporate authorities, judge or judges holding the title to the lands described in such notice, shall make a true statement in writing, containing a true account of all moneys by him or them expended in the acquisition of the title, and the administration or execution of the trust to that time, including the moneys paid by him or them for the purchase of said lands, all necessary travelling expenses, all moneys paid for publishing and posting such notices, and for proof thereof, and for all other necessary and proper expenses incident to such trust, and also a true account of his or their charges for time and services, employed in the business of such trust, to that time. The whole amount of such account for moneys and reasonable charges for compensation, shall be a charge upon the lands so held in trust, in favor of the trustee, and shall be paid by the several claimants entitled to such lands, in proportion to the several quantities or shares thereof to which they may be respectively entitled.

SEC. 12. Before the corporate authorities, or judge or judges holding any such lands in trust, as aforesaid, shall be required to execute, acknowledge or deliver any deed of conveyance thereof, as hereinbefore mentioned, to any person or persons claiming to be entitled to such deed, such person or persons shall pay or tender to him or them the sum of money chargeable on the part thereof to be conveyed by such deed, according to the statement or account mentioned in the eleventh section of this article, the amount to be determined by the proportion which the quantity of the land to be described in such deed, shall bear to the whole quantity of the land of which it is a part, compared with the whole amount thus charged upon the whole quantity of land, together with the interest on each of the money items of such account, at the rate of twenty-five per centum per annum, from the time when the same accrued, and also such further sums as shall be a reasonable compensation for preparing, executing and acknowledging such deed, and the fees of the officer taking the acknowledgment thereof: *Provided*, That no mayor or judge holding such lands in trust, shall be entitled to receive more than fifty cents for a deed containing the description of one lot, block, or parcel of land, nor more than five cents for each additional lot, block, or parcel of land described in such deed; and no clerk of any incorporated town, shall be entitled to receive more than ten cents for attesting with the seal of such town, the execution of any deed by the corporate authorities of such town.

SEC. 13. After the expiration of ninety days from the time of the first publication of the notice mentioned in the third section of this article, the corporate authorities, or judge, or judges, holding the title to the lands described therein, shall, upon a reasonable demand or request, and upon the payment or tender to him or them of the moneys mentioned in the twelfth section of this article, execute, acknowledge and deliver to each and every claimant, or association, or company of claimants to such lands, or any lot, block, parcel or share thereof, a deed of conveyance thereof, as prescribed in the second section of this article, and according to the statement made and deposited by him or them, pursuant to the fourth section of this article: *Provided, however*, That no such deed of conveyance shall be acknowledged or delivered for any part, lot, block, or share of such lands, to which there shall be adverse or contesting claimants, until the controversy thereon shall have been settled or determined, in the manner hereinbefore prescribed; and whenever any such controversy shall have been so settled and determined, the corporate authorities, or judge or judges, shall, upon the like demand or request, and the like payment or tender, and by the like deed of conveyance, convey the lands, or interest or share therein, the right to which shall have been thus ascertained, to the person or persons thereby determined to be entitled to the same.

SEC. 14. When a town-site is entered, under the act of congress mentioned in this article, by the corporate authorities of any incorporated town, deeds shall be made by the mayor or other chief officer of such town, for the time being, under the corporate seal of such incorporated town, and attested by the clerk or register of such town, and if such incorporated town have no seal, then under the scrawl or private seal of said mayor, or other chief officer, attested by the clerk or register, as aforesaid. When the land is entered by the judge or judges of the county court, deeds shall be signed by such judge or judges, under his or their private seal or scrawl.

SEC. 15. In case any judge, who shall have entered any such land under the provisions of the said act of congress, and thus become the sole trustee thereof, shall be possessed of or entitled to the same, or any part, lot, block, or share thereof, according to and by virtue of the provisions of this article, and his claim or right shall not be claimed adversely to him, by any person, he shall be, and be deemed to be, seized and possessed of the title thereto, and the estate therein, to his own use, in fee-simple absolute, free and discharged of such trust; and no conveyance other than the patent of the lands, including the same, shall be necessary to perfect his absolute title thereto. In case such land or interest, or share in such land, so claimed by such judge, shall be claimed by any other person or persons adversely to him, the conflicting claims between him and such other person shall be adjusted by settlement, or action, as hereinbefore prescribed, and in such case of action at law, the issues therein shall be tried before some judge who shall be disinterested, and possessed of competent jurisdiction to hold court for the trial of, and to render judgment in, such action.

SEC. 16. For all the purposes of determining the rights of adverse claimants to any lands so entered, pursuant to the said act of congress, the corporate authorities, or judge or judges hereinbefore mentioned, shall be deemed to possess and hold the title to the lands so entered in such trust, from the time of the entry thereof.

SEC. 17. The costs in the actions mentioned in this article, and in proceedings before the judge, as prescribed in the eighth section of this article, shall be regulated and recoverable as in other civil actions.

SEC. 18. If the title to any such lands shall be vested in any judge, such judge shall convey to the people, or to the legal authorities, the land used or laid out by the town authorities, as streets, lanes, avenues, parks, commons and public grounds, within such time as is herein prescribed for making conveyances to individuals.

SEC. 19. Whenever the title to such lands shall be held by the corporate authorities of any town, all lands used, laid out, or designated for public uses by such corporate authorities, as streets, lanes, avenues, alleys, parks, commons and public grounds, shall vest in and be held by the corporation absolutely, and shall not be claimed adversely by any person or persons whomsoever; and it shall not be necessary to execute any conveyance for the same, to the corporation or the people of such town.

SEC. 20. Each and every person and association and company of persons, who shall be entitled to any lots, pieces or parcels of land, held in trust under the act of congress aforesaid, by the authorities of any incorporated town, and respecting which there shall be no controversy, shall, within three months after the expiration of the time mentioned for filing statements, pay or tender to the corporate authorities, holding such lands in trust, the sum of money chargeable upon such lot, pieces or parcels of land, together with the interest thereon, and fees for preparing, executing and acknowledging a deed to such lands; and in case of a failure so to do, such person or persons shall be deemed to have relinquished all right, title, interest, and estate in such lands, and each and every piece, parcel and share thereof, and shall be forever barred the right of asserting or claiming any right, title, interest or estate therein; and such incorporated authorities shall thereafter be and be deemed to be seized and possessed of the title thereto, to their own use in fee-simple absolute, free and discharged of such trust, and no conveyance other than the patent of the lands including the same, shall be necessary to perfect their absolute title thereto; and any person or persons who shall be entitled to any lots, parcels or pieces of land, held in trust by any incorporated authorities, as aforesaid, and respecting which there has been adverse claimants, shall, within three months after the final determination of any action between the adverse claimants, respecting such lands, pay or tender to such incorporated authorities, holding such lands in trust, the sum of money chargeable upon such lots, pieces or parcels of land, together with the interest and fees for preparing, executing and acknowledging a deed to such lands, and in case of a failure so to do, such person or persons shall be deemed to have relinquished all right, title, and interest and estate in such lands, and each and every piece, parcel and share thereof, and shall be forever barred the right of asserting or claiming any right, title, interest or estate therein, and such corporate authorities shall be and be deemed to be and be seized and possessed of the title thereto, to their own use in fee-simple, absolute, free and discharged of such trust, and no conveyance other than the patent to the lands including the same, shall be deemed necessary to perfect their absolute title thereto.

SEC. 21. Probate judges are hereby declared to be county judges for the purpose of executing the trust mentioned in said act of congress.

Prior Statutes Repealed. An act concerning Warrants of Cities and Towns. Approved October 24, 1861. Laws 1861, p. 46.

An act to prohibit persons holding office under municipal corporations from entering into contracts with such corporations, and for other purposes. Approved February 10, 1865. Laws 1865, p. 49.

An act prescribing rules and regulations for the execution of the trust arising under the Act of Congress, entitled An act for the relief of citizens upon lands of the United States, under certain circumstances. Approved March 11, 1864. Laws 1864, p. 139.

Local Statutes. An act to amend An act prescribing rules and regulations for the execution of the trust arising under the Act of Congress, entitled An act for the relief of citizens of towns upon lands of the United States, under certain circumstances. Approved March 11, A. D. 1864.

Be it enacted by the Council and House of Representatives of Colorado Territory:

SECTION 1. That the probate court of Arapahoe county shall have jurisdiction of, and said court is hereby authorized to hear and determine suits and controversies which now exist and remain undetermined between parties in relation to any lot or lots in the city of Denver, which were heretofore entered by James Hall, as judge of probate of Arapahoe county, under and by virtue of the act of congress of the 28th of May, A. D. 1864, in the same manner and according to the provisions of the act to which this is an amendment.

SEC. 2. That whenever any suit is commenced in said probate court, to determine the right to any such lot or lots, the same shall be commenced in the same manner as provided in the act to which this is an amendment, in case the same had been instituted before a county judge, as provided in the said act, and the said probate court shall have power, on the final hearing of all such cases, to render judgment or final decree, providing for the conveyance of the legal title to the lot or lots in controversy, to the successful party; and shall have full power to execute the trust provided for in said act, in as full manner and form as the said county judge might or could do by virtue of said act.

SEC. 3. The said probate court shall have power to summon and bring before said court, all parties who may have any interest in any such lot or lots, and to fully determine their respective rights from the proofs given in each case; and appeals and writs of error shall be allowed to the supreme court, as now provided for in said act, and for the purpose of having all matters in controversy in cases of appeal before the appellate court, it shall be the duty of the probate court to keep all the proceedings in each case in writing, and preserve the same, as now provided in said act.

SEC. 4. Whenever it shall be made to appear to said probate court, that suit has been instituted in the district court to determine the rights between parties to any lot or lots, the right to which may be in controversy before said probate court, it shall be the duty of said court to dismiss or discontinue such suit, at the costs of the party commencing such suits in the district court.

SEC. 5. All suits and proceedings which may be commenced in any court under the provisions of the act to which this is an amendment, shall be instituted within two years from the passage of this act; and if not instituted before that time, the party or parties claiming any right or interest in and to any lot or lots in said city of Denver, shall be forever thereafter barred.

SEC. 6. That all lots or parts of lots in said city of Denver, now held by James Hall in trust, under and by virtue of said act of congress, to which there is no claimant, or to which no good and valid claim can be shown and established by any person or persons, according to the terms of said act of congress, or of this act, and the act to which this is an amendment, shall rest in and be held by the city of Denver in trust, for the benefit of common-schools in said city, and may be disposed of by said city for that purpose; that said city of Denver shall have the power to proceed by suit before said probate court, or any court of competent jurisdiction, to secure and perfect the legal title to any and all such lots, in the same manner as other parties, under the provisions of this act, and the act to which this is amendatory.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved February 9, 1866. Laws 1866, p. 87.

An act to amend an act entitled An act prescribing rules and regulations for the trust arising under the Act of Congress, entitled An act for the relief of citizens of towns upon lands of the United States, under certain circumstances. Approved March 11, A. D. 1864.

Be it enacted by the Council and House of Representatives of Colorado Territory:

* * * * * * * *

SEC. 2. That all lots, blocks, pieces or parcels of land, lying within the town of Boulder, in the county of Boulder, and territory of Colorado, unclaimed under section four of said act, shall, on the first Monday of July, A. D. 1865, be exposed to sale, at public vendue, by the probate judge of said county, holding said lots, blocks, pieces or parcels of land under the act to which this act is an amendment, to the highest and best bidder therefor, said sale to be continued from day to day until all such lots, blocks, pieces or parcels of land have been offered for sale: *Provided*, That no lot, piece or parcel of land shall be sold for a less sum than ten dollars.

SEC. 3. That all lots, blocks, pieces or parcels of land so offered for sale, and for which a less sum than ten dollars shall be bid therefor, shall be and remain in the hands of said county judge or his successor in office, for the benefit of said town of Boulder, to be exposed to future public sales, whenever, in the opinion of said county judge or his successor in office, it will be for the benefit of said town in which said lots, blocks, pieces or parcels of land are located: *Provided*, That at any such future sales of said lots, blocks, pieces or parcels of land shall any one be sold for a less sum than five dollars.

SEC. 4. That the money arising from such sales shall be deposited with the county treasurer of said county, to constitute a fund to be appropriated for the purpose of erecting a court-house and jail in the town of Boulder, county of Boulder, and territory of Colorado.

SEC. 5. That said fund shall be available for the purposes mentioned in section four of said act, by orders drawn on the county treasurer, said orders shall state the objects for which the money is appropriated, to whom payable, and shall be signed by the chairman and clerk of the board of county commissioners of said county.

SEC. 6. That the said county judge and his successor in office shall be allowed five per cent. on all moneys arising under the sales of property, as provided in this act, to be retained by said judge out of the proceeds of said sales.

SEC. 7. That this act shall be construed to apply alone to the town of Boulder, in the county of Boulder, territory of Colorado.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved February 10, 1865. Private laws, 1865, p. 130.

CHAPTER LXXXV.

TRAITORS.

SECTION

1. Upon affidavit that plaintiff in civil suit in any court of record is disloyal, and notice to him or his attorneys, the court shall stay proceedings until plaintiff shall file an oath to support the constitution, etc.; if plaintiff shall fail to make, subscribe and file such oath within the time limited, cause to be dismissed, and no future action to be brought; *proviso;* plaintiff if a foreigner may file an affidavit not to assist the rebellion, etc.
2. If set-off be filed, the same oath may be required of defendant.
3. No attorney shall practise unless upon first taking the oath prescribed by this chapter.

SECTION 1. If at any time a defendant, or one of several defendants, in any civil suit which is now or shall be hereafter pending in any court of record in this territory, shall file in the office of the clerk of the court in which such cause is pending the affidavit of such defendant, or of some credible person, stating that the person making such affidavit has good reason to believe, and does believe, that the plaintiff is not loyal to the government of the United States, and shall serve upon the plaintiff or plaintiffs, if natural persons, or his or their attorney, a written notice objecting to the further prosecution of the suit on the ground of the disloyalty of the plaintiff, it shall be the duty of the court to arrest and stay all proceedings in the cause, until such plaintiff shall make and subscribe before some officer authorized to administer oaths, and file in such cause, an affidavit in the following form, to wit: I (here insert the name of the plaintiff) do solemnly swear that I will support the constitution of the United States, and the organic act of the territory of Colorado; that I will bear true faith and allegiance to the government of the United States, any ordinance, resolution or law of any state or territory, or of any convention or legislature thereof, to the contrary notwithstanding; that I have not since the (here insert the date of the passage of this act) knowingly aided, encouraged, countenanced or assisted, nor will I hereafter, in any manner, aid, encourage, countenance or assist, any person or persons in acts of rebellion, nor the so called Confederate States, nor any of them, in their rebellion against the government of the United States; and this I do without any qualification, or mental reservation whatsoever. So help me God. And if the said plaintiff shall fail to make and file such affidavit within ten days after the giving of such notice, if a resident of the county, or within thirty days, if a resident of the territory and not of the county, or, if not a resident of the territory, then within such further reasonable time as the court or a judge thereof shall determine, such cause shall thereupon be dismissed absolutely, and no other action or suit shall ever be maintained by such plaintiff, or his grantees, assigns or representatives, for the same cause of action: *Provided*, That the time may, for cause shown, be enlarged by the court or the judge thereof, and the court may relieve against any forfeiture, default or dismissal of a cause arising from accident, mistake or surprise: *And provided*, That when the plaintiff sues as a trustee or to the use of another, the oath may be taken by the person for whose benefit the action is prosecuted: *And provided, further*, That where the plaintiff is a foreigner by birth, who has never been naturalized, nor declared his intentions to become a citizen of the United States, he may make and file the following affidavit, in lieu of that hereinbefore prescribed: I (here insert the name) do solemnly swear that I will not at any time or in any manner, aid, encourage, countenance or assist the so called Confederate States, or any of them, in their rebellion against the government of the United States, and that I will not, while a resident of the United States, or in the territories thereof, knowingly commit, or aid, or assist in, or countenance, or encourage, any act tending to subvert the constitution or government thereof. So help me God.

SEC. 2. If a set-off shall be pleaded by the defendant in any civil suit, the plaintiff may at any time, file an affidavit and giving notice to the defendant, as provided in section one to be filed and given by the defendant, and thereupon if the defendant shall fail to make and file a like oath within the respective times in said section above limited, such set-off shall be disregarded by the court, and the cause shall proceed as if the same had not been pleaded, and no suit shall ever be maintained by the said defendant, his grantees, representatives or assigns, for the same cause of action.

SEC. 3. No attorney, or counsellor at law, or solicitor in chancery, shall be permitted to practise in any of the courts of law or equity in this territory, until he shall have taken and filed in the office of the clerk of the supreme court, or in the office of the clerk of the district court, in which such attorney, counsellor or solicitor desires to practise, the oath prescribed by this chapter, and for every wilful and intentional violation of the provisions of this section, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than five hundred dollars, nor more than two thousand dollars, for the use of the territory.

Prior Statutes Repealed. An act to exclude Traitors and Alien Enemies from Courts of Justice in this Territory in civil cases. Approved March 5, 1864. Laws 1864, p. 157.

CHAPTER LXXXVI.

TROUT–FISH.

SECTION
1. Taking trout-fish by seine, net, etc., prohibited.
2. Who deemed guilty of violating the previous section.
3. Penalty, how collected; one half to informer.

SECTION
4. Each day a separate offence.
5. No property of person convicted, exempt from an execution for penalties under this act.
6. Informer not disqualified as a witness.

SECTION 1. All persons are hereby forbidden to take trout from any waters of this territory, by means of any seine, net, basket or trap.

SEC. 2. Any and all persons being identified in setting or using any seine, net, basket or trap, or causing the same to be done, in any streams or waters in said territory which abound in trout, shall be deemed guilty of a violation of the provisions of the foregoing section.

SEC. 3. Any person convicted of violating the provisions of this chapter, before any court of competent jurisdiction, in the county where such offence was committed, shall pay a fine of not less than twenty-five dollars, and not exceeding fifty dollars, for each offence, one half of such fine to be paid over to the complaining witness, and the other half into the treasury of the county in which such offence was committed.

SEC. 4. Every day in which such basket, trap, seine or net stands, or is set, in any of the waters described in section two of this chapter, shall constitute a separate offence.

SEC. 5. No property belonging to, or owned by, any person convicted of violating the provisions of this chapter, or any one of them, shall be exempt from execution issued for the purpose of collecting the amount of the penalty thereof.

SEC. 6. The complaining witness, in proceedings under the provisions of this chapter, shall not be deemed disqualified to testify, by reason of his interest in the penalty.

Prior Statutes Repealed. An act for the protection of Trout-Fish. Approved November 6, 1861. Laws 1861, p. 116.

CHAPTER LXXXVII.

UNIVERSITY.

SECTION
1. Seminary-fund established; of what to consist.
2. To remain a permanent fund; the income thereof not appropriated by law to be added to fund.
3. So much only of the income to be appropriated, as may be necessary for the purposes authorized by law; permanent fund not to be diminished.
4. Auditor to keep a register of seminary-lands.
5. To enter therein all sales.
6. Auditor and treasurer to possess same powers and perform same duties in regard to the seminary-fund, lands and income, as in regard to common-school lands, etc.
7. Governor, secretary and district-attorney to be commissioners of seminary-fund.
8. Commissioners to direct investment of seminary-fund.
9. Investments how made.
10. Auditor to report to trustees semi-annually the increase in seminary-fund.
11. Trustees may direct disposition of such increase.
12. Amount accruing from seminary-fund, how disposed of.

SECTION 1. There shall be, and hereby is, created and established, a fund to support a territorial university, for the promotion of literature, and of the arts and sciences, to be denominated the Seminary Fund, which shall consist of all moneys arising from the sale of lands which may be donated by the Congress of the United States for seminary purposes, and all money which may be donated for that purpose from any and all sources, and the interest, dividends, profits and proceeds of such lands and moneys, except such distribution as shall be authorized by law.

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to wit: on or before the fifteenth day of July, and the fifteenth day of January, prepare and transmit to the trustees, a statement, showing the increase of the seminary fund in the treasury, subject to be applied to the support of the university.

SEC. 11. The trustees are authorized to cause such semi-annual increase of the funds in the treasury to be deposited in the treasury of the board, by a resolution requiring the auditor to draw his warrant on the treasury, in favor of the person named in such resolution, for the amount in the treasury.

SEC. 12. The amount accruing from the seminary fund, after payment of salaries for each current year, shall be applied as follows: *First*, to the payment of arrears and salaries. *Second*, To provide for library, apparatus, cabinet, &c. *Third*, To improvement of buildings, grounds, &c. *Fourth*, Surplus to be invested as provided for in the preceding sections of this chapter.

Prior Statutes Repealed. Article I. of An act to establish the University of Colorado. Approved November 7, 1861. Laws 1861, p. 144.

And see Article II. of the same act, which is still in force.

CHAPTER LXXXVIII.

VENUE.

SECTION

1. Change of venue granted in civil causes, on affidavit of prejudice, partiality, etc., of judge; or prejudice in minds of inhabitants of county against applicant; may be granted in term or vacation; reasonable notice of application to be given to opposite party, or his attorney; judge may in certain cases grant change of venue upon his own motion.
2. Defendant in any indictment may have a change of venue upon like application; if applicant in custody, sheriff to remove body to county to which venue is changed; proceedings in such case; but one change of venue allowed in criminal case; none allowed until after indictment.
3. Change of venue not to be granted after first term at which applicant might be heard.
4. In civil cases, when there are two or more plaintiffs or defendants, venue not to be changed but by consent of all; in criminal cases where venue changed as to one of several defendants, a copy of indictment to be transmitted to court into which venue is changed.
5. Proceedings where venue changed in vacation.
6. In civil cases, petitioner to pay costs of change of venue; where venue changed without application, costs to abide event of suit.
7. On change of venue in criminal case, no further recognizance required.
8. Proceedings where, in criminal case, defendant, after change of venue, is convicted, and imprisonment is part of sentence.
9. Questions concerning the regularity of change of venue, deemed waived after verdict.
10. Accused persons brought before justice of the peace for examination, may have change of venue; affidavit.

SECTION 1. If either party,[1] in any civil cause, in law or equity, which may be depending in any district court, shall fear that he will not receive a fair trial in the court in which the action is pending, on account that the judge is interested, or prejudiced, or is related to, or shall have been of counsel

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(1) Only a party to the record can make the application. *Crowell* v. *Maughs*, 2 Gilm. 149.

for, either party, or that the adverse party has an undue influence over the minds of the inhabitants of the county wherein the action is pending, or that the inhabitants of such county are prejudiced against the applicant, so that he cannot expect a fair trial, such party may apply to the court in term-time, or the judge thereof in vacation, by petition, setting forth the cause of the application, and praying a change of venue, accompanied by an affidavit verifying the facts in the petition stated; and such court or judge, reasonable notice of the application having been given to the other party,[2] or his attorney, shall award a change of venue to some county where the causes complained of, do not exist;[3] and in all such cases where the judge is interested, or is related to, or shall have been counsel for, either party, the court, in term-time, may award a change as aforesaid, in its discretion, without any application from either party: *Provided*, That neither party shall have more than one change of venue.[4]

SEC. 2. Any defendant in any indictment or information shall be awarded a change of venue, upon setting forth any of the causes, and in the manner required in the preceding section.[5] If the applicant is in custody, or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant to the jail of the county, if there be a jail in such county, to which the venue is changed, and there deliver him to the keeper of such jail, together with the warrant by virtue of which he is confined or held in custody, not more than three days next before the first day of the term of said court. The sheriff shall deliver such warrant, with the body of the prisoner, to the jailer of the proper county, who shall

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(2) A change of venue will not be granted, unless previous notice is given. See *Hunt* v. *Tinkham*, 21 Ill. 639.

Or unless such notice be waived. *Marble* v. *Bonhotel*, 35 Ill. 246.

A party seeking a change of venue, should give notice at the earliest practicable moment; if the cause exists and is known, the application should be made in vacation, to the judge at chambers. *Moss* v. *Johnson*, 22 Ill. 633.

And see *Kelly* v. *Downs*, 29 Ill. 74.

What is reasonable notice, depends upon the circumstances of each particular case; and it seems rests in a great measure in the discretion of the court. *Berry* v. *Wilkinson*, 1 Scam. 164. *Kelly* v. *Downs*, 29 Ill. 74.

And see *Walsh* v. *Ray*, 38 Ill. 30.

(3) Upon sufficient affidavit, the applicant is entitled to a change of venue as a matter of right. *Walsh* v. *Ray*, 38 Ill. 30. *Gray* v. *The People*, 26 Ill. 344. *Clark* v. *The People*, 1 Scam. 120.

And the court cannot impose conditions; the right is absolute. *Bellingall* v. *Duncan*, 2 Gilm. 591.

(4) As to the affidavit, see *McGoon* v. *Little*, 2 Gilm. 42. *Barrows* v. *The People*, 11 Ill. 122.

Supplementary affidavits will not be received, to support a petition which is insufficient in itself. *Kelly* v. *Downs*, 29 Ill. 74.

By consent of parties, the venue may be changed, in any case, without the petition required by the statute. *Pierson* v. *Finney*, 37 Ill. 29.

(5) An information in the nature of a *quo warranto*, brought to protect the private rights of the relator, is within the statute. *The People, ex rel.* v. *Shaw*, 13 Ill. 583.

Informations for contempt in disturbing the order of the court, in its presence or beyond it, or disregarding injunctions, and disobeying its orders and decrees, and the like, are not within the statute. *Crook* v. *The People*, 16 Ill. 535.

receive the same and give the sheriff a receipt therefor, and shall take and keep the prisoner, in the same manner as if he had been originally committed to his custody: *Provided*, There shall be but one change of venue in any criminal case, and not then till after indictment found.

SEC. 3. Changes of venue shall not be granted after the first term at which the party applying for the same might have been heard, unless the cause shall have arisen subsequent to such term.[6]

SEC. 4. In civil cases, where there are two or more plaintiffs or defendants, the venue shall not be changed, unless the application is made by or with the consent of all the plaintiffs or defendants, as the case may be;[7] and in criminal cases, where a change is granted to part of the defendants, a copy of the indictment, certified by the clerk, and not the original, shall be transmitted to the court to which the venue is changed.

SEC. 5. When any judge shall award a change of venue, in term or vacation, in any cause, civil or criminal, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit together with an order in writing, directing the change of venue; and such clerk shall file the same in his office, and shall make out a copy thereof, and a full transcript of the record and proceedings in such cause, and shall certify and transmit the same to the proper court, together with all the papers filed in the cause, and appertaining to or forming part of the record, including, in criminal cases, the indictment (except in cases provided for in the preceding section), and recognizance of the party, and all witnesses; and the clerk of the court to which such cause is changed, shall file the same; the cause shall thereupon be docketed, and all proceedings had, as if the cause had originated in the said court.[8]

SEC. 6. The expenses of a change of venue in a civil suit, shall be borne by the petitioner, and not taken as part of the costs of the suit, and a fee-bill shall be made out and issued as in other cases, and with the same effect: *Provided*, That where the venue is changed without application of either party, the costs shall abide the event of the suit.

SEC. 7. When the venue is changed in a criminal case, the parties and witnesses who have entered into recognizance, are hereby required, on notice of such change, to attend at the

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(6) The application must be made at the first term at which the party might be heard, whatever may be the condition of the pleadings. *Gilson* v. *Powers*, 16 Ill. 355.

(7) Where one of two defendants has suffered a default, the other may, upon proper affidavit, procure a change of the venue, without the consent of his co-defendant. *Hitt* v. *Allen*, 13 Ill. 593.

(8) As to the transcript of the record, and the clerk's certificate, and when objections must be made thereto. See *Yates* v. *The People*, 38 Ill. 528. *Wight* v. *Kirkpatrick*, 4 Scam. 340. *McBain* v. *Enlos*, 13 Ill. 79. *Granger* v. *Warrington*, 3 Gilm. 299. *Holliday* v. *The People*, 4 Gilm. 114.

time and place the trial is to be had according to such change; and a failure to do so, shall work a forfeiture of their recognizance.[9]

SEC. 8. Where change of venue has been granted in a criminal case, and the defendant is convicted and imprisonment shall be part of the judgment, the sheriff shall convey such prisoner at once to the county where the crime was committed, and retain him in custody, according to the judgment of the court. The costs and charges shall be paid by the county where the crime was committed, if the defendant be unable to pay them.

SEC. 9. All questions concerning the regularity of the proceedings, and the right of the court, to which the change is made, to try the cause, and execute the judgment, shall be considered as waived, after trial and verdict.[10]

SEC. 10. Persons arrested and brought before justices of the peace for examination, on charge of any criminal offence, may have such examination removed from before such justice, by filing an affidavit that said justice is so prejudiced against him or them that he or they believe they cannot have a fair and impartial investigation before such justice; in which case, the justice shall immediately transmit all papers connected with such examination, to the next nearest acting justice, or in case of his absence, to any other justice of the peace of the next adjoining precinct in the county, who shall proceed to hear and determine the matter, as though it originally commenced before him: *Provided*, The defendant shall be held in charge, till the complaint shall be heard and disposed of, by the justice to whom the papers shall be sent as aforesaid.

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(9) The court granting the change of venue may require the defendant to enter into recognizance to appear in the court to which the venue is changed. *Stebbins* v. *The People*, 27 Ill. 240.

(10) See *Gardner* v. *The People*, 3 Scam. 3. *Hitt* v. *Allen*, 13 Ill. 592. *Brennan* v. *The People*, 3 Scam. 354. *The People* v. *Scates*, 3 Scam. 354.

Prior Statutes Repealed. An act concerning Venue. Approved October 24, 1861. Laws 1861, p. 175.

CHAPTER LXXXIX.

WEIGHTS AND MEASURES.

SECTION
1. The standard weights and measures used by government of United States, adopted for this territory.
2. The ton defined; *proviso* as to stone-coal.
3. The bushel defined,

SECTION
4. Treasurer to procure standard of weights and measures from federal government, and give notice thereof; county commissioners to procure duplicates.

SECTION
5. Traders to have their weights and measures inspected and approved or condemned.
6. County commissioners to appoint inspector of weights and measures.
7. To prescribe fees to be charged by inspector.
8. To furnish inspector with tools, brands, etc.

SECTION
9. Penalty for using weights, etc., not inspected and sealed.
10. Inspector to make complaint for violations of this chapter.
11. Fines how disposed of.

SECTION 1. The weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, shall be deemed the lawful standard of weights and measures of the people of this territory.

SEC. 2. The ton shall be twenty hundred pounds weight, avoirdupois, except in the article of mineral coal, when it shall be deemed to express the conventional quantity of twenty-eight bushels.

SEC. 3. Sixty pounds of wheat, fifty-six pounds of rye, fifty-six pounds of indian corn, forty-eight pounds of barley, thirty-three and a third pounds of oats, sixty pounds of potatoes, sixty pounds of beans, sixty pounds of clover-seed, forty-five pounds of timothy-seed, forty-four pounds of hemp-seed, fifty-two pounds of buckwheat, fourteen pounds of blue-grass seed, fifty pounds of corn-meal, fifty-seven pounds of onions, and fifty pounds of salt, respectively, shall be the standard weight of a bushel of each of such articles.

SEC. 4. It shall be the duty of the treasurer of this territory, to procure as soon as possible from the proper department of the federal government, all necessary weights and measures for the use of the territory, and as soon as he shall receive them, to give public notice through two or more newspapers, for thirty days, to each and every board of county commissioners in the territory, to obtain copies or duplicates of said weights and measures.

SEC. 5. That all venders and traders in goods, wares, and merchandise, gold-dust, and other articles of traffic shall, within ninety days after the reception of the standards by said commissioners, have their balances, weights, and measures compared with said standards of their respective counties, and approved and marked by the county inspector, and if the same are found to be correct, to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect.

SEC. 6. That on the first regular meeting of the board of county commissioners in each county in this territory, after the passage of this chapter, and thereafter annually, on the first regular monthly meeting of every year, said county commissioners shall appoint a fit and proper person, who shall be styled Inspector of Weights and Measures, and shall give bond to the county for the faithful performance of the duties of his office, as said commissioners may direct.

SEC. 7. That each county-board shall make out a list of fees to be charged by said inspector, which fees when charged shall be recoverable in any court, as any other debt or account is recovered.

SEC. 8. That it shall be the duty of each county-board, as aforesaid, to furnish to each inspector all the necessary tools, marks, and brands, which he may require, to be paid for out of the county funds.

SEC. 9. All persons who shall, after the expiration of the time before mentioned, in any county when such inspector shall have been appointed and performed his duties, use within this territory, for the purpose of weighing or measuring any goods, wares, merchandise, gold-dust, or other articles of traffic, actually sold by him, any weights and measures which shall not be approved and sealed by the inspector, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, may be imprisoned not exceeding one year, or fined not exceeding one thousand dollars, in the discretion of the court in which the conviction shall be obtained.

SEC. 10. Whenever it shall come to the knowledge of the inspector that any person within his county has violated any of the provisions of this chapter, it shall be his duty to enter a complaint against him before some magistrate having jurisdiction of the offence thereof, to the end that the offender may be punished and fined according to this chapter.

SEC. 11. All fines imposed and collected for the violation of the provisions of this chapter, shall be paid into the county treasury for the use of the people of the county in which the offence was committed.

Prior Statutes Repealed. An act concerning Weights and Measures. Approved March 11, 1864. Laws 1864, p. 149.

An act to repeal certain parts of an act entitled An act concerning Weights and Measures. Approved January 4, 1867. Laws 1867, p. 88.

CHAPTER XC.

WILLS, EXECUTORS AND ADMINISTRATORS.

SECTION

Of wills and the probate thereof.

1. Who may devise real estate; who personalty.
2. Devises of real estate, annuities and rents to be in writing.
3. Nuncupative wills, how evidenced and established.
4. Revocation of wills, how effected; words spoken not to revoke a will in writing.
5. Devise to an attesting witness, the will not being otherwise sufficiently attested, to be void; such witness competent to give testimony; if witness entitled as heir, his portion as heir shall be saved to him.

SECTION
6. Attesting witness to whom a debt is secured by the will, nevertheless competent.
7. Appointment of a debtor to be executor of the will of his creditor, not to effect a release of such debt.
8. Birth of posthumous child, not a revocation of will; legacies to be abated, so as to raise a portion for such child.
9. In case of death of a legatee, being child or grandchild, before death of a testator, issue of such legatee to inherit; if no such issue, estate devised to be treated as intestate estate.
10. Person having last will in possession, to present same for probate, within ten days after knowledge of testator's death.
11. Proceedings where will secreted or withheld.
12. Altering or destroying will, or withholding it for six months, penalty.
13. In what county will to be proved.
14. Where will presented for probate, widow, heirs, etc., of testator to be summoned.
15. Guardian *ad litem* may be appointed in certain cases.
16. Notice by publication to non-residents.
17. Proceedings after service of summons, and publication of notice to non-residents; proof not to be heard, unless guardian of minors appear; guardian *ad litem* may be appointed.
18. Attesting witness required to appear and testify; penalty.
19. What proof required to entitle will to probate.
20. Proof required in case of nuncupative will.
21. Lost will, or will destroyed, how admitted to probate.
22. Testimony to be reduced to writing and preserved.
23. Witness residing out of county or territory, testimony how obtained; original will may be attached to *dedimus*.
24. Where judge of probate is an attesting witness, probate of will to be made in the district court.
25. In case of death, etc., of attesting witness, proof of handwriting, and other secondary proof admissible.
26. All wills to be recorded; and preserved in the office of the probate judge.
27. Wills proved and recorded in other states how proved here; citation of heirs, etc., not required.
28. Record of probate of will conclusive evidence; heir at law may contest same by bill in chancery, within two years; after two years, probate conclusive; rights of persons under disability saved; effect of testimony taken at probate of will, in such controversy.
29. If will admitted to probate, afterward appear not to be the last will, etc., probate revoked; legacies to be repaid.
30. Evidence in case of appeals.

Appointment and qualification of executors.

31. After probate of will, executor named therein entitled to letters testamentary; where no executor named, or if he die, refuse to act, or is disqualified, letters of administration with will annexed to issue; copy of will to go out with letters.
32. Executor named in will to present same for probate, or declare his refusal, within thirty days after testator's death; penalty.
33. If executor refuse to act, or is disqualified, to whom administration to be granted.
34. Persons under age of seventeen, *non compos*, or infamous, and married women (unless husband join with her in her bond) disqualified to act as executors.
35. Executor of an executor, not, therefore executor of first testator.
36. Power of executor before probate of will.
37. If two persons appointed executors, and one refuses to qualify, or be disqualified, letters to issue to the other.
38. Oath of executor or administrator with will annexed.

SECTION
39. Executor, unless will otherwise direct, and administrators with will annexed, to give bond; form of bond.
40. Court may, in certain cases, require bond of executor, although will otherwise direct.
41. All estate not devised to be treated as intestate estate; executor, etc., to have preference in administration.
42. Letters testamentary, and letters of administration with will annexed, form of.

Appointment and qualification of administrators.

43. From what court letters of administration shall issue.
44. To whom letters to be granted; proof to be made of death, and intestacy; administrator *pro tem.* may be appointed until the person entitled apply.
45. Upon application by person not entitled to administer, as husband, etc., proof required that persons entitled have relinquished their right.
46. Form of letters of administration.
47. How tested, signed, etc.; form of letters of administration *de bonis non*, etc.
48. Oath of administrator.
49. Bond.
50. Administrator of executor to give bond; to make settlement of the estate.

Administrators to collect.

51. In certain cases, a collector may be appointed; to have charge of estate until will established, or until administration can be granted to person entitled.
52. Form of letters, in such case.
53. Bond.
54. Oath.
55. Powers of collector so appointed; may collect and secure estate; make inventory and appraisement; may be authorized to sell perishable goods; compensation.
56. May commence suits; suits not to abate by his removal; may pay debts, on the order of probate court.
57. On issuing letters testamentary, etc., power of collector to cease; to deliver property on hand to executor, etc.; penalty.

Public administrator.

58. Governor to appoint public administrator in each county.
59. In what case administration to be granted to public administrator.
60. Oath.
61. Bond.
62. In certain cases letters granted to public administrator may be revoked; *proviso.*
63. Where balance remains on hand after payment of all debts of intestate, how disposed of.
64. Upon death of person intestate not leaving widow or next of kin or creditor in county, public administrator may take charge of estate until administrator appointed; expense how paid.

Removal and resignation of executors and administrators.

65. If will discovered after administration granted, letters of administration to be revoked.
66. If will annulled or set aside, after probate thereof, letters granted thereon to be revoked, and administration granted, as in other cases.
67. Power of court to revoke letters testamentary, or of administration; proceedings in such case.
68. Proceedings where one of several executors or administrators dies, is removed, or becomes disqualified; removal of executor or administrator not to discharge his bond; power of administrator *de bonis non.*
69. Probate court may require additional security from time to time from any executor or administrator.
70. Securities of executor or administrator, conceiving themselves in danger from mismanagement, etc., may require counter-

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security, or a new bond to be given; proceedings in such case.

71. Form of new bond in such case.

72. Letters procured through false representation, to be revoked.

73. Court of probate to determine all controversies under preceding section, may give costs against administrator.

74. Where letters of administration are revoked, other letters to issue to person entitled.

75. Executor, administrator or guardian, upon making final settlement, after notice, may resign; court may dispense with notice.

Administration of the personal estate.

76. Executor or administrator to make inventory of personal estate; what it shall set forth; to be returned into probate court in one month.

77. Appraisement of personal estate; warrant of appraisement, form of; fees.

78. Oath of appraisers; appraisement, how made.

79. Appraisement-bill, with oath annexed, to be delivered to executor, etc., to be returned into probate court.

80. Inventory and appraisement-bills, effect of as evidence.

81. Fees of appraisers.

82. Widow may claim the articles allotted to her, after appraisement; may take specific articles, or money in lieu, or part in property and part in money; executor, etc., to notify widow of appraisement, and set apart the articles selected by her; penalty.

83. If additional estate discovered after inventory, additional inventory and appraisement to be had.

84. When property, choses in action, title papers, etc., are secreted, party charged therewith may be cited before court and examined; how punished.

85. Administrator, etc., to make sale of personal estate; at public or private sale as court may direct; what shall be sold; notice; sale may be on credit; security; if will so direct, sale not to be made, unless necessary to pay debts.

86. Growing crops, how disposed of.

87. Desperate claims may be compounded and sold; *proviso*.

88. Property of decedent not to be removed, by executor, etc., out of territory.

89. In public sales, clerk and crier to be appointed.

90. Sale-bill.

91. Books of account of decedent to be subject to inspection of all persons interested.

92. With what of the estate executors, etc., chargeable.

93. In case widow commit waste in lands, liability of her and her husband, in case of subsequent marriage, to heir.

Of the real estate.

94. Sales pursuant to power in will, valid; survivor of executors may make sales.

95. Where will directs sale or other disposition of estate, and no person appointed to execute power, the executor or administrator with will annexed, may execute it.

96. Where personal property found insufficient to pay debts and discharge legacies, resort may be had to the real estate.

97. Executor or administrator to present petition to probate or district court, setting forth value of personalty, etc., amount of debts, and legacies, describing real estate and praying the aid of the court; who to be made defendant.

98. Summons to issue on filing petition.

99. When summons returnable.

100. Summons may issue to different counties.

101. Service how made.

102. Publication as to non-residents, and persons of unknown residence.

103. Petition continued if service not made ten days, or if publication not made sixty days, before day set for appearance; *alias* summons may issue.

104. Proceedings to be as in chancery.

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105. Guardian *ad litem* to be appointed to minor defendants.

106. Parties in interest who are not made defendants may appear.

107. Court to hear proofs, and if it be shown that personalty will be insufficient, may decree sale, leasing or mortgaging of real estate.

108. If sale decreed, decree to specify what shall be sold, whether for cash, or on a credit, and length of credit, and rate of interest; executor to take security on premises sold, if not otherwise ordered.

109. If executor, etc., ordered to raise money by mortgage, decree to specify rate of interest and time of loan.

110. If lease decreed, length of time to be fixed; not to exceed five years.

111. Decree may direct that if leasing or mortgaging impracticable on the terms specified, executor shall sell.

112. Time, place and notice of sale.

113. Conveyance, mortgage or lease by executor to recite substance of decree; to have same effect as if by testator in his lifetime; no final conveyance till sale approved by court.

114. Executor to report proceedings under decree.

115. If report approved, executor, etc., to execute deed.

116. If disapproved, sale void; resale may be ordered.

117. Moneys arising to be assets; to be administered under direction of court.

118. If decedent has purchased real estate before death, administrator, with approval of court, may complete payment.

119. Such real estate may be sold, or disposed of as other real estate.

120. Court may order executor to relinquish the estate upon terms.

121. If decedent leave lands encumbered, court may order executor, etc., to redeem same from proceeds of personalty, or may order other lands sold to redeem same.

122. Executor or administrator removing, resigning, dying, etc., successor may complete sale, etc.

123. Executor, etc., of mortgagee, upon payment of mortgage, may release mortgaged lands.

124. Where estate found to be insolvent, same to be so entered, and court may make order to compel executor, etc., to apply for order of sale, etc.

Allowance of demands and settlement of estates.

125. Demands against decedents' estates classified; *first*, funeral expenses and expenses of last sickness; *second*, expenses of administration and physician's bill in last sickness; *third*, money received by decedent, as executor, administrator or guardian; *fourth*, all other demands exhibited in one year from granting of letters; *proviso*, administrator may pay taxes on real or personal estate, and shall be allowed for same; all demands not exhibited in one year barred, unless other estate discovered, not contained in inventory, saving of rights of persons under disability.

126. Executor, etc., to fix a day and term at which he will attend the probate court for settlement of claims, etc.; notice.

127. Persons having claims against estate may present same on day fixed; court may hear and determine same, or continue hearing; if no objection made to claim, by any person interested, claimant may swear to justice of demand; if objection made, claim adjudicated, as in other cases; estates not answerable for costs on claims filed after such term.

128. Claims may be presented at any time, on notice to executor.

129. Claims how proven, when contested; in what cases claimant permitted to swear; court may require oath of claimant in addition to other proofs.

130. Claim may be allowed, with rebate of interest, though not due.

131. Manner of exhibiting claims; formal pleading not required.

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132. When administrator, etc., has claim against estate, proceedings.
133. Where claimant appears indebted to executor, etc., judgment to be given and execution issued as in other cases.
134. Where demand allowed, same to be entered of record; effect of such entry.
135. Probate court to assess all demands as allowed; demands in each class to be paid *pro rata;* if executor, etc., shall pay claims before allowance, same shall be proved before allowed to him.
136. Where action brought in district court, in one year after granting letters, plaintiff to share in estate, as if claim presented in probate court.
137. No execution to issue upon judgment recovered against executor, etc.; transcript of judgment entry to be filed in probate court, and classed and paid.
138. Executor, etc., to render accounts; when; what to set forth.
139. Apportionment of assets, at each accounting; court may delay apportionment until the expiration of one year from issuing letters.
140. Executor, etc., refusing to pay money according to apportionment, may be proceeded against as for a contempt; action will lie on bond.
141. Where sufficient assets appear to pay all legacies and demands against estate, court shall order payment of legacies.
142. Distribution of surplus.
143. Advancements to heir, if charged to him by intestate, shall be considered in making distribution; heir not required to refund excess of advancements over his distributive share.

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144. Executors, etc., not required to pay legatees or distributees, till bond and security given to refund in case of other debts appearing against estate.
145. Apportionment in case such repayment required; action on bond.
146. Where widow renounces will, and thereby legacies to others are increased or diminished, court to apportion the increase or diminution in a ratio corresponding to amount of legacies.
147. Executor, etc., to give notice before presenting his accounts for final settlement.
148. Proceedings relative to such settlement; court, account being satisfactory, may discharge executor, etc.; discharge not to affect liability on bond.
149. Compensation of executors, etc.

Actions by and against executors and administrators.

150. Executor not chargeable beyond assets by reason of false pleading.
151. Action on bond; proof of bond.
152. *Devastavit* need not be previously established.
153. Action by one executor, etc., against another, engrossing estate.
154. What actions survive to executors and administrators.

General provisions.

155. Certain words construed.
156. Administration of whole estate to be had in county out of which letters issued.
157. Before whom affidavits required by this chapter may be made.
158. Power of probate court to compel executor, administrator, guardian and conservator of insane person to account.

OF WILLS AND THE PROBATE THEREOF.

SECTION 1. Except as provided in the chapter concerning married women, every person aged twenty-one years, if a male, or eighteen years, if a female and not married, being of sound mind and memory, shall have power to devise all the estate, right, title and interest in possession, reversion or remainder, which he or she hath, or at the time of his or her death shall have, of in and to any lands, tenements, hereditaments, annuities or rents charged upon or issuing out of them, or goods and chattels and personal estate of every description whatsoever, by will or testament; all persons of the age of seventeen years, and of sound mind and memory, shall have power to dispose of their personal estate, by will or testament.

SEC. 2. All wills, by which any lands, tenements, hereditaments, annuities or rents, are devised, shall be reduced to writing, and signed by the testator or testatrix, or by some one in his or her presence, and by his or her direction, and attested in the presence of the testator or testatrix, by two or more credible witnesses.

SEC. 3. A nuncupative will made and declared in the last sickness of the testator, in the presence of two witnesses of good character, called by the testator to attest the same, and by them reduced to writing, within a reasonable time after the speaking thereof, and proved in the manner hereinafter men-

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to raise a portion for such child or children, equal to that which such child or children would have been entitled to receive, out of the estate of such testator or testatrix, if he or she had died intestate.

SEC. 9. Whenever a devisee or legatee in any last will, being a child or grandchild of the testator or testatrix, shall die before such testator or testatrix, and no provision shall be made for such contingency, the issue, if any there be, of such devisee or legatee, shall take the estate devised or bequeathed, as the devisee or legatee would have done had he or she survived the testator or testatrix; and if there be no such issue, at the time of the death of the testator or testatrix, the estate disposed of by such devise or legacy shall be considered and treated in all respects as intestate estate.

SEC. 10. The person having in possession any last will, shall, within ten days after the death of the testator or testatrix, or as soon thereafter as the decease of such testator or testatrix shall come to his knowledge, present the same to the probate court of the proper county for probate.

SEC. 11. If any credible person shall file with the probate court his complaint on oath, showing that any person hath in possession, or that there is good reason to believe that such person hath in possession, the last will of any person deceased, whereof such court hath jurisdiction to receive the probate, and secretes, or wilfully withholds the same, such court shall issue an attachment against the person so alleged to withhold or secrete such will, and upon the arrest of the person accused, may examine him or her touching his or her having in possession such will, and withholding the same, and may hear other evidence touching the same matter; and if it shall appear that such person hath in possession, and wilfully withholds such will, he or she shall be punished as for a contempt of court, by fine not exceeding five hundred dollars, and by imprisonment until he or she will produce such will, or account therefor to the satisfaction of the court.

SEC. 12. If any person to whom a will hath been or shall be delivered by the party making it, for safe custody as aforesaid, shall alter or destroy the same without the direction of the sai party, or procure or willingly suffer the same to be done, o shall wilfully withhold it for the space of six months after th death of the testator or testatrix shall be known to him or her the person so offending shall, on conviction thereof, be fined i not less than one hundred dollars nor more than one thousan dollars, and imprisoned in the penitentiary for a term not les than six months, nor exceeding five years, and such person s convicted shall, moreover, be liable in a civil action to an legatee named in such will, for any damages which he or sh may have sustained by reason of such destruction, alteration, or withholding.

SEC. 13. If any testator or testatrix shall have a mansion, house, or known place of residence, his or her will shall be proved in the probate court of the county, wherein such mansion, house, or place of residence shall be. If he or she has no place of residence, and lands be devised in his or her will, it shall be proved in the probate court of the county wherein the lands lie, or in one of them, where there shall be land in several different counties; and if he or she have no such known place of residence, and there be no lands devised in such will, the same may be proved either in the county where the testator or testatrix shall have died, or that wherein his or her estate, or the greater part thereof, shall lie.

SEC. 14. Upon the production of any last will for probate, the court shall ascertain from the will, and from such other satisfactory evidence as may be produced, the names and places of residence of the widow, or husband, and heirs at law, of the testator or testatrix, and who of such heirs at law, if any, are minors, and the names and places of residence of the guardians of such minors, if any there be; and thereupon a citation shall issue to such widow or husband, and heirs at law, or in the case of any minor, to his or her guardian, and to the executor named in such will, if such will be presented for probate by some person other than such executor, requiring them and each of them to attend the probate of such will, before the court at a day to be named therein, not less than ten nor more than sixty days subsequent to the issuing of such citation, such citation to be served by reading the same to each person named therein, not less than five days before the day set for the hearing of such probate.

SEC. 15. If there be no guardian, other than the testamentary guardian named in such will, appointed for any such minor, the court shall forthwith appoint some suitable and proper person, as guardian *ad litem* to such minor, to appear at such probate on his or her behalf, and a notification of such appointment, and a citation to appear at such probate, as in other cases, shall forthwith issue to the guardian so appointed.

SEC. 16. If it shall appear that any such widow or husband, or heir at law of such testator or testatrix, resides, or hath gone out of this territory, or that his or her residence upon diligent inquiry, cannot be found, the judge of the probate court shall cause to be published for four successive weeks, in some weekly newspaper printed in this territory, a notice, addressed to such non-resident, or person of unknown residence, or if the name of any such person be unknown, then to the unknown widow or husband, or heirs at law, as the case may be, of the testator or testatrix, setting forth the presentation of such will for probate, the name and place of residence of the person presenting the same, the name and place of residence of the testator or testatrix, in such will, and the property devised as described therein, and requiring such widow or husband, or heirs at law, to attend the probate of such will, at a day and place named in such notice, not less than thirty, nor more than sixty days from the first publication thereof.

SEC. 17. If, upon the day set for the probate of such will, it shall appear that such citation hath been served upon the persons named therein, or in case the widow, husband, or any heir at law, of the testator or testatrix, be non-resident, or out of the territory, or of unknown residence, that due publication of such notice hath been made as required by the preceding section, the court may proceed to hear the probate of such will, or may continue the hearing thereof, for good cause shown; but no such probate shall be heard unless the guardian of the minor heirs, if any, appear, and if such guardian fail to appear, and no cause be shown therefor, the court may forthwith appoint a guardian *ad litem* to any such minor, to appear in his or her behalf at the hearing of such proof.

SEC. 18. It shall be the duty of each and every witness to any will, testament or codicil, made and executed in this territory, as aforesaid, to be and appear before the probate court, to testify of and concerning the execution and validity of the same, and the said probate court shall have power and authority to attach and punish by fine and imprisonment, or either, any witness who shall, without a reasonable excuse, fail to appear, when duly summoned, for the purpose aforesaid: *Provided*, The said punishment by imprisonment shall in no case exceed twenty days, nor shall a greater fine be assessed for any such default, than the sum of fifty dollars.

SEC. 19. If, upon the hearing of such proof, it shall satisfactorily appear by the testimony of two or more of the subscribing witnesses to such will, that they were present and saw the testator sign such will, and attested the same at his request, or that he acknowledged the same to be his last will, and that they believe the testator to be of sound mind and memory at the time of signing and acknowledging the same, the court shall admit the same to probate and record: *Provided*, That no proof of fraud, compulsion, or other improper conduct be exhibited, which, in the opinion of the court, shall be deemed sufficient to invalidate or destroy the same, and every will, testament or codicil when thus proven, shall be recorded by the clerk of the probate court, in a book to be provided by him for that purpose, and shall be good and available in law, for the granting, conveying, and assuring the lands, tenements and hereditaments, annuities, rents, goods and chattels therein and thereby given, granted and bequeathed.

SEC. 20. Upon the probate of any nuncupative will, it must appear by the testimony of at least two credible, disinterested witnesses, who were present at the speaking and publishing thereof, that they were present and heard the testator pronounce the words, and that they believed him to be of sound mind and memory, and that he or she did, at the same time, desire the persons present, or some of them, to bear witness that such was his or her will, or words to that effect,[1] and that such will was made in the time of the last sickness of the testator or testatrix; and it being also proven by two disinterested witnesses, other than those hereinbefore mentioned, that the said will was committed to writing within a reasonable time after the death of the testator or testatrix, and no proof of fraud, compulsion, or other improper conduct being exhibited, which, in the opinion of said court, shall be sufficient to invalidate or destroy the same, all such wills, when proven and authenticated as aforesaid, shall be recorded in like manner as other wills are directed to be recorded by this chapter.

SEC. 21. Whenever any will shall have been lost or destroyed and the fact of the execution thereof can be established, as hereinbefore provided, and the contents thereof are likewise shown by the testimony of two or more witnesses, the probate court may admit the same to probate and record, as in other cases: *Provided*, That in every such case the order admitting such will to probate, shall set forth the contents of the will, at length, and the names of the witnesses by whom the same was proven, and such order shall be recorded in the record of wills: *And provided further*, That no will shall be admitted to probate upon proof of the contents thereof, unless it shall be proven that the same was in existence at the time of the death of the testator.

SEC. 22. All testimony adduced upon the probate of any will shall be reduced to writing, subscribed by the witnesses respectively, and sworn to before the judge of the probate court, and shall be attached to such will, or filed therewith, and preserved in the office of the clerk of the court.

SEC. 23. When the testimony of any non-resident witness or witnesses, residing out of the county wherein any will is sought to be admitted to probate, may be desired, touching the execution of such will, it shall be lawful for the party seeking to have such will admitted to probate, or resisting the same, to

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(1) It is indispensable to the validity of a nuncupative will, that the testator should request those present to bear witness to the words spoken, as his last will. *Smith* v. *Arnett*, 27 Ill. 248.

Signs and gestures might if their intent be clear and unequivocal, supply the place of such verbal request. *Ibid.*

cause the deposition of such witness to be taken in like manner as provided in the chapter concerning evidence and depositions; the probate court may, in its discretion, direct the original of such will to be attached to any *dedimus potestatem*, or commission, issued in such case; and the deposition of any such witness taken, certified, and returned, according to law, shall be of like force and effect as if his testimony had been heard in the probate court: *Provided*, That before any such original will shall be suffered to be attached to any such commission, a copy thereof shall be made and examined, and certified by the probate judge to be a true copy of such original, and until the return of such original, such copy shall be retained in the office of the probate judge, in lieu of such original will; and if such will be admitted to probate, the same may, in case of the loss or destruction of the original thereof, be recorded from such certified copy.

SEC. 24. When the judge of the probate court may have become an attesting witness to any will required by this chapter to be proven before such court, and his testimony may be necessary to the proof of the same, in such case the probate of such will shall be made before the district court of the proper county, and the clerk of the district court shall issue the citation, and cause to be published the notice, required by this chapter; and if, by the order of the district court, such will be admitted to probate and record, the clerk of the district court shall certify the same, together with the testimony in support thereof, and a copy of such order of the district court, to the probate court of such county, and the same shall be there recorded, and letters testamentary or of administration, shall issue thereon, as in other cases.

SEC. 25. In all cases, where any one or more of the witnesses to any will shall die or remove to some distant country, unknown to the parties concerned, or cannot be found, so that his or her testimony cannot be procured, it shall be lawful for the probate, or other court having jurisdiction of the subject-matter, to admit proof of the handwriting of any such deceased or absent witness, as aforesaid, and such other secondary evidence as is admissible in courts of justice to establish written contracts generally, in similar cases, and may thereupon proceed to record the same, as though such will, had been proved by such subscribing witness or witnesses, in his, her, or their proper persons.

SEC. 26. All original wills, after probate thereof, shall be recorded by the clerk of the probate court, in a well-bound book, to be provided by him for that purpose, and shall remain and be preserved in the office of the probate judge.

SEC. 27. Where any last will, of or concerning estates within this territory, hath been, or shall be, admitted to probate before any court or tribunal of any state or territory of the United States, beyond the limits of this territory, authorized by the laws of such state or territory to admit the same to probate, the record of such court or tribunal in the matter, certified in the manner required by the act of Congress in such cases made and provided, shall entitle such will to probate and record in this territory, without further proof of the execution thereof, and without notice to the heirs, widow, or husband of such testator or testatrix, and letters testamentary or of administration, may issue thereon, as in other cases.

SEC. 28. In all actions wherein the execution or contents of any last will may be brought in question, the record of the probate of such will, or an exemplified copy of such record, shall be conclusive proof of the execution and contents thereof, both as against the persons summoned and appearing at the probate thereof, and as against all other persons: *Provided*, That any heir at law, or other person interested to contest the said will, who was not summoned by actual service of process, and who did not appear at the probate of such will, may, at any time within two years after the admitting of such will to probate, appear and by his or her bill in equity, in the district court of the county wherein such will was admitted to probate, or of the county to which such county is attached for judicial purposes, contest the validity of such will; and thereupon, an issue at law shall be directed, whether the writing in question be the last will of the testator or testatrix, or not, which issue shall be tried by a jury[2] according to the practice in courts of chancery in similar cases; but if no such person shall appear within the time aforesaid, the probate, as aforesaid, shall be forever binding and conclusive on all the parties concerned, saving to infants, *femmes covert*, persons absent from the territory, or *non compos mentis*, the like period after the removal of their respective disabilities; and in all such trials by jury, as aforesaid, the recorded testimony of the witnesses examined at the probate of such will may be used as evidence, and shall have such weight as the jury shall think it may deserve.

SEC. 29. If, by the decree of the district court upon such verdict, or by the probate of any later will, in the same manner as herein provided, it shall be established that such writing, so originally admitted to probate, is not the last will of the decedent, the probate of such writing shall forthwith be revoked, and the legacies, if any, which have been paid by the executor

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(2) The affirmative, on the trial of such issue, is with the party claiming the validity of the will; he has a right to open and close the case. *Rigg* v. *Wilton*, 13 Ill. 15. *Haydon* v. *Haydon*, 6 J. J. Marsh. 48. *Rogers* v. *Thomas*, 1 B. Monr. 390.

or administrator, appointed thereunder, shall be repaid to the executor or administrator subsequently appointed; upon the production of any such later will for probate, the devisees in the will originally proved, shall be summoned and made defendants.

SEC. 30. When any last will shall have been admitted to probate, or probate thereof shall have been refused, and an appeal shall be taken from the order of the probate court, in the premises, it shall be lawful for the party seeking to have the said will admitted to probate, to support the same upon trial of the said appeal, by any evidence which would be competent in case probate of said will had been allowed, and the same were afterwards contested under this chapter; and the said will, having been so proved upon said appeal, shall be admitted to probate, liable however to be subsequently contested, as is provided in case of wills admitted to probate in the first instance.

OF THE APPOINTMENT AND QUALIFICATION OF EXECUTORS.

SEC. 31. All persons named as executors in any will, shall, after the same shall be proven and admitted to record, as before directed, be entitled to letters testamentary thereon; and where there shall be no executors named in such will, or the executor named therein shall die, refuse to act, or be otherwise disqualified, letters of administration, with the will annexed, shall be granted to such person or persons as may be entitled thereto; in all which cases, copies of such wills, testaments, or codicils shall go out with the letters.

SEC. 32. It shall be the duty of the executor or executors of the last will and testament of any person deceased, knowing of his, her, or their being so named and appointed, within thirty days next after the decease of the testator or testatrix, to cause such will to be proved, and recorded in the proper county, as aforesaid, or to present such will, and declare his, her or their refusal to accept of the executorship;[3] and every such executor or executrix, so neglecting his trust and duty as aforesaid, without just excuse for such delay, to the satisfaction of the probate court, shall forfeit the sum of twenty dollars per month, from and after the expiration of the said term of thirty days, until he shall cause probate of said will to be made, or present the same, as aforesaid, to be recovered by action of debt, by any person who will sue for the same, in any court having jurisdiction thereof.

SEC. 33. Upon the refusal of the executor or executors to qualify, or if it shall appear that such executor or executors is, or are, under any disqualification, as hereinafter mentioned, the probate court shall commit the administration of the estate of the deceased, with a copy of the will annexed, unto the widow or next of kin to the deceased; and upon their refusal, neglect or incapacity to act, may grant such administration to one or more of the principal creditors; and on their refusal, to such other person or persons as the court shall think fit.

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[3] As to the proper evidence of the renunciation of his office, by an executor. See *Clinefelter v. Ayres*, 16 Ill. 330.

SEC. 34. If any person, named as an executor or executrix in any last will and testament, shall be, at the time when administration ought to be granted, under the age of seventeen years, or of unsound mind, or convicted of any crime rendering him or her infamous, or shall be a married woman, letters of administration, or testamentary, as the case may require, may be granted, in the same manner as if such person had not been named, as such, in such will (unless, in the case of a married woman, her husband shall give bond with her as aforesaid, with two or more sufficient securities, to be filed as aforesaid, for her faithful performance as such executrix); and on all questions touching such disqualifications, the probate court shall receive the like testimony as would be admissible in any court of law or equity in similar cases.

SEC. 35. The executor of an executor shall not, in consequence thereof, be executor of the first testator.

SEC. 36. The power of the executor or executrix over the testator's estate, before probate of the will and obtaining letters testamentary, shall extend to the burial of the deceased, the payment of necessary funeral charges, and the taking care of the estate; but in all such cases, if the will shall be rejected, when presented for probate, and such executor thereby never qualify, he shall in nowise be liable as an executor of his own wrong, unless upon refusal to deliver up the estate to the person or persons authorized to receive the same: *Provided*, This section shall not be construed to exempt any such person, claiming to be executor, as aforesaid, for any waste or misapplication of the estate.

SEC. 37. When two or more executors are appointed in and by the same will, and one or more of the persons named as such shall die, refuse to take upon himself or herself such executorship, or be disqualified, letters testamentary shall be granted thereon to the other person or persons so named, not renouncing, as aforesaid, and not disqualified.

SEC. 38. Every executor, or administrator with the will annexed, at the time of proving the will and granting letters testamentary or of administration, as aforesaid, shall take and subscribe, before the probate court, the following oath, to wit:

I do swear (or affirm) that this writing contains the true last will and testament of the within named A. B., deceased, so far as I know or believe, and that I will well and truly execute the same, by paying first the debts, and then the legacies mentioned therein, as far as his goods and chattels will thereunto extend, and the law charges me, and that I will make a true and perfect inventory of all such goods and chattels, rights and credits, as may come to my hands or knowledge, belonging to the estate of the said deceased, and render a fair and just account of my executorship, when thereunto required by law, to the best of knowledge and abilities. So help me God.

SEC. 39. All executors to be appointed, unless the testator or testatrix shall otherwise direct in the will, and all administrators with the will annexed, shall, before entering upon the duties of their executorship and administrations, respectively, enter into bond, with good and sufficient security, to be approved by the probate court, in a sum double the value of the estate, and payable to the people of Colorado territory, for the use of the parties interested, in following form, to wit:

Know all men by these presents, That we, A. B., C. D. and E. F., of the county of ——, and territory of Colorado, are held and firmly bound unto the people of the territory of Colorado in the penal sum of —— dollars, current money of the United States, to which payment well and truly to be made and performed, we, and each of us, bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this —— day of ——, A. D. 18—. The condition of the above obligation is such, that if the above bounden, A. B., executor of the last will and testament of G. H., deceased (or administrator with the will annexed, as the case may be), do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands, tenements and hereditaments, and the rents and profits issuing out of the same, of the said deceased, which have, or shall come to the hands, possession or knowledge of the said A. B., or into the possession of any other person for him, and the same so made, do exhibit in the probate court for the said county of ——, as required by law, and also make and render a fair and just account of his actings and doings as such executor (or administrator) to said court when thereunto lawfully required, and to well and truly fulfill the duties enjoined on him, in and by said will, and shall moreover pay and deliver, to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof and as the law shall charge him, and shall, in general, do all other acts which may, from time to time, be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue.

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to the foregoing form, as nearly as may be; and all letters testamentary and of administration shall be under the seal of the court, and attested and signed as other process.

OF THE APPOINTMENT AND QUALIFICATION OF ADMINISTRATORS.

SEC. 43. Letters of administration shall issue out of the probate court of the county wherein the intestate resided next previous to his death, or, if the intestate had no residence in this territory, then out of the probate court of the county wherein his personal estate, or the greater part thereof, may be found; or if he leave no personal estate, then out of the probate court of the county wherein his real estate, or the greater part thereof, is situate; and administration of the estate shall be had therein.

SEC. 44. Administration shall be granted to the husband, upon the goods and chattels of his wife, and to the widow, or next of kin, to the intestate, or some of them, if they will accept the same and are not disqualified, but in all cases the widow shall have the preference; but if no widow or other relative of the intestate shall apply within twenty days from the death of such intestate, the probate court may grant administration to any creditor or creditors, who shall apply for the same; and in case no such application be made by any creditor or creditors, within ten days next ensuing the lapse of said term of twenty days as aforesaid, administration may be granted to any person or persons whom the judge of probate may think will best manage the estate:[4] *Provided*, That no administration shall in any case be granted until satisfactory proof be made before the probate court to whom application for that purpose shall be made; that the person on whose estate letters of administration are requested, is dead, and died intestate, so far as they have knowledge and belief: *Provided, also*, That the probate court may, in the exercise of its discretion, appoint some person to act as administrator until the person rightfully entitled to administration shall apply for the same; and the person so appointed shall give bond in the same manner, and during the time that he shall act as administrator, he shall perform the duties prescribed by law in relation to other administrators.

SEC. 45. Upon every application for letters of administration upon the goods and chattels, rights and credits, of any person dying intestate, by any person not entitled to the same, as hus-

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(4) If administration be improvidently granted, to a person not the widow, nor of kin, nor a creditor, before the lapse of the statutory period, it is error, and it seems that upon writ of error, all proceedings by such administrator may be set aside. *Schnell* v. *The City of Chicago*, 38 Ill. 389.

But in a collateral proceeding it will be presumed that the court proceeded correctly, though the record does not show a renunciation of those first entitled. *Ibid.*

band, widow, next of kin, creditor or creditors, or public administrator, the probate court to which such application shall be made, shall, before the granting of letters of administration to any such applicant or applicants, cause such applicant or applicants to produce satisfactory evidence that the person or persons having the preference, have relinquished their prior right thereto: *Provided*, Such application shall be made within the space of thirty days next ensuing the death of any such intestate, as last aforesaid; but if such application be made after the expiration of thirty days, it shall not be necessary to make such proof, and the probate court may proceed to grant letters to such applicant or applicants, or any other person or persons, as he may think fit.

SEC. 46. The form of letters of administration to be issued in this territory, shall, as near as may be, be as follows, to wit:

TERRITORY OF COLORADO, } ss.
County of ——. }

The people of the territory of Colorado, to all to whom these presents shall come, greeting: Know ye, that whereas, A. B., of the county of ——, and territory of Colorado, died, intestate as it is said, on or about the —— day of ——, A. D. 18—, having at the time of his decease personal property in this territory, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same, to the end, therefore, that said property may be collected and preserved, for those who shall appear to have a legal right or interest therein, we do hereby appoint C. D., of the county of ——, and territory of Colorado, administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his decease, with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this territory, and in general to do and perform all other acts which now or hereafter may be required of him by law.

SEC. 47. All letters of administration shall be tested and signed, as other process, in the name of the probate judge, and be issued under the seal of the court. And in all cases where letters of administration *de bonis non*, or letters of administration to any public administrator, shall hereafter be issued by any probate court, the same shall be issued in conformity with the foregoing forms, as nearly as may be, taking care to make the necessary variations, additions or omissions, to suit each particular case.

SEC. 48. The probate court shall, in all cases, upon granting administration of the goods and chattels, rights and credits, of every person dying intestate, require the administrator or administrators (public administrators excepted) to take and subscribe the following oath, to wit:

I do solemnly swear (or affirm) that I will well and truly administer all and singular the goods and chattels, rights, credits and effects of A. B., deceased, and pay all just claims and charges against his estate, so far as his goods, chattels and effects shall extend, and the law charges me, and that I will do all other acts required of me by law, to the best of my knowledge and abilities. So help me God.

Which said oath shall be reduced to writing, subscribed by the person taking the same before the said probate judge, and filed in his office.

SEC. 49. Each and every administrator shall, before entering upon the duties of his office, enter into bonds, with good and sufficient security, to be approved by the probate court, in a sum double the value of the estate; the formal part of the bond shall be as heretofore prescribed, with a condition thereto in the following form, to wit:

The condition of the above obligation is such that if the said A. B., administrator of all and singular the goods and chattels, rights and credits of J. K., deceased, do make, or cause to be made, a true and perfect inventory of all and singular, the goods and chattels, rights and credits of the said deceased, which shall come to the hands, possession or knowledge of him, the said A. B., as such administrator, or to the hands of any person or persons for him, and the same, so made, do exhibit, or cause to be exhibited, in the probate court for the said county of ——, agreeably to law, and such goods and chattels, rights and credits, do well and truly administer, according to law, and all the rest of the said goods and chattels, rights and credits which shall be found remaining upon the account of the said administrator, the same being first examined and allowed by the probate court, shall deliver and pay unto such person or persons, respectively, as may be legally entitled thereto, and further, do make a just and true account of all his actings and doings therein, when thereunto required by the said court, and if it shall hereafter appear that any last will and testament was made by the deceased, and the same be proved in court, and letters testamentary or of administration be obtained thereon, and the said A. B. do in such case, on being required thereto, render and deliver up the letters of administration granted to him as aforesaid, and shall, in general do, and perform all other acts which may at any time be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue.

Which said bond shall be signed and sealed by the said administrator and his securities, attested by the probate judge, and filed in his office, and in all cases where bonds shall be taken from any administrator *de bonis non*, or in any other cases, where a form shall not be prescribed in this chapter, the same shall be made as nearly as may be in conformity with the form above prescribed with variations to suit each particular case.

SEC. 50. The administrator of an executor or an administrator, shall enter into a sufficient bond, with approved security, to cover the damages that might accrue by a forfeiture of the same, and shall have power, and he is hereby required, to make final settlement of the unsettled estate, under all the liabilities and with all the privileges of an administrator *de bonis non*.

OF ADMINISTRATORS TO COLLECT.

SEC. 51. During any contest in relation to the probate of any will, before the same shall be recorded, or until a will which may have once existed but shall be destroyed or concealed, shall be established, and the substance thereof committed to record, with the proof thereupon taken, or during any contest in regard to the right of executorship, or to administer the estate of any person dying, either testate or intestate, or whenever any other contingency may happen which shall be productive of great delay before letters testamentary or of administration can be issued upon the estate of such testator or intestate, to the person or persons having legal preference to the same, the probate court may appoint any person or persons as administrator to collect and preserve the estate of any such decedent, until probate of his will, or until administration of his estate be granted, taking bond and security for collecting the estate, making an inventory thereof, and safe-keeping and delivering up the same, when thereunto required by the said court, to the proper executors or administrators, whenever they shall be admitted and qualified as such.

SEC. 52. The form of the letters to be granted, to the person or persons so appointed to collect and preserve the estate of the decedent, as aforesaid, shall be as follows, viz.:

The people of the territory of Colorado, to all to whom these presents shall come, greeting: Know ye, that whereas, A. B., late of the county of ——, and territory of Colorado, deceased, as it is said, had, at his (or her) decease, personal property within this territory, the administration whereof cannot be immediately granted to the persons by law entitled thereto, but which, if speedy care be not taken, may be lost, destroyed or diminished; to the end therefore, that the same may be preserved, for those who shall appear to have a legal right or interest therein, we do hereby request and authorize C. D., (and E. F., if two shall be appointed,) of the county of ——, and territory aforesaid, to collect and secure the said property, wheresoever the same may be in the territory, whether it be goods, chattels, rights or credits, and to make, or cause to be made, a true and perfect inventory thereof, and to exhibit the same, with all convenient speed, to the probate court of the said county of ——, together with a reasonable account of his (or their) collection, acts and doings, in the premises aforesaid.

SEC. 53. Before letters of administration to collect shall be granted, as aforesaid, the person or persons so appointed, as aforesaid, shall give bond, with good and sufficient security, to be approved by the probate court, payable to the people of the territory of Colorado, for the use of the parties interested, and conditioned as follows:

The condition of the above obligation is such, that if the above bounden C. D. shall well and honestly discharge the duties appertaining to his appointment as administrator to collect, of the estate of A. B., late of the county of ——, deceased, and shall make, or cause to be made, a true and perfect inventory of all such goods, chattels, debts and credits of the said deceased, as shall come to his (or her) possession or knowledge, and the same, in due time, return to the office of the probate judge of the proper county, and shall also deliver to the person or persons authorized by the said probate court as executors or administrators, to receive the same, all such goods, chattels and personal estate as shall come to his or her possession, as aforesaid, and shall, in general, perform such other duties as shall be required of him (or her) by law, then the above obligation to be void, otherwise to remain in full force and virtue.

Which bond shall be signed and sealed by such administrator and his (or her) securities, attested by the probate judge, and filed in his office.

SEC. 54. Before any administrator to collect, shall enter upon the duties of his appointment as aforesaid, he or she shall take and subscribe the following oath or affirmation, before the probate court, to wit:

I do solemnly swear or affirm, that I will well and honestly discharge the trust reposed in me as collector, or administrator to collect of the estate of A. B., deceased, according to the tenor and effect of the letters granted to me by the probate court of the said county of ——, to the best of my knowledge and ability, so help me God.

Which said oath shall be reduced to writing, subscribed by the party making it, and filed in the office of the probate judge, before whom the same shall be taken.

SEC. 55. Every collector appointed as aforesaid, shall have power to collect the goods, chattels and debts of the said deceased according to the tenor of the said letters, and to secure the same at such reasonable and necessary expense as shall be allowed by the probate court, and the said court may authorize him or her, immediately after the inventory and appraisement of such estate, to sell such as shall be perishable, or may be injured by delay, and to account for the same; and for the whole trouble incurred by such collector, the probate court may allow such commission on the amount of said personal estate as shall be actually collected and delivered to the proper executor, or administrator, as aforesaid, as said court may deem just and reasonable: *Provided*, The same shall not exceed six per cent. on the amount stated in such inventory or bill of appraisement as aforesaid.

SEC. 56. Every collector appointed as aforesaid, shall have power to commence suits for debts due to the decedent, and to release the same on payment thereof, and no such suit shall abate by the revocation of the letters of such administrator to collect, or collector, but the same may be prosecuted to a final decision by the executor or executors, administrator or administrators, to whom letters testamentary, or of administration, may be granted as aforesaid. And every such collector shall have power to pay, out of any fund in his hand belonging to the estate of the decedent, any debts which may be allowed by the probate court against such estate, and which the probate court shall, by order entered of record, direct such collector to pay.

SEC. 57. On the granting of letters testamentary, or of administration, as aforesaid, the power of any such collector, as may have been appointed, shall cease; and it shall be his duty to deliver on demand, all the property and money of the deceased, which shall have come to his hands or possession (saving such commission as may be allowed by the court as aforesaid, and saving all such sums of money as may have been paid to creditors of the estate by order of the probate court), to the person or persons obtaining such letters; and in case any such collector or administrator shall refuse or neglect to deliver over such property and money to his successor, when legal application shall be made therefor, such administrator, so neglecting or refusing, shall be liable to pay twenty per cent. over and above the amount of all such property or money as shall come to his hands, by virtue of his said administration; and shall, moreover, forfeit all claim to any commission for collecting and preserving the estate; which said twenty per cent., together with all damages that may be sustained, by reason of the breach of any bond, which may, at any time, be given by any such collector, may be sued for and recovered by any person or persons to whom letters testamentary, or of administration, may be granted as aforesaid, for the use of the estate of such decedent.

OF PUBLIC ADMINISTRATORS.

SEC. 58. The governor of the territory shall appoint, in each county, a suitable person to be the public administrator, for such county, who shall hold his office for two years, and until his successor shall be appointed and qualified.

SEC. 59. In all cases where any person shall die, seized or possessed of any estate within this territory, or having any right or interest therein, and shall have no relative or creditor within this territory, who will administer upon such deceased person's estate, it shall be the duty of the judge of probate, upon the application of any person interested therein,[5] to commit the administration of such estate, to the public administrator of the proper county; and such public administrator may be made a party to any suit or proceeding in law or in equity, and shall, to all intents and purposes, be liable, as the personal representative of such deceased person.

SEC. 60. Each and every public administrator who may, at any time, be appointed as aforesaid, shall, before entering upon the duties of his office, take and subscribe the following oath, to wit:

I, A. B., public administrator in and for the county of ——, and territory of Colorado, do solemnly swear or affirm, that I will well and truly perform all such duties as may be required of me by law, to the best of my knowledge and abilities, so help me God.

Which said oath shall be taken before the probate judge of the proper county, reduced to writing, and signed by the public administrator, and filed in the office of the said probate judge.

SEC. 61. It shall be the duty of the probate judge upon granting letters of administration to public administrators, to take bond, in the same manner as other administrators; and if any public administrator shall neglect or refuse to take out letters of administration, and give bond as aforesaid, within twenty days after it becomes his duty to do so, his office shall be deemed vacant; and upon the certificate of the probate judge, of that fact, the governor shall fill such vacancy.

SEC. 62. In all cases, where administration shall have been granted to any public administrator, as aforesaid, and it shall afterwards appear that there is a widow, or next of kin, or creditor or creditors of the deceased, entitled to the preference of administration by this chapter, it shall be the duty of the court to revoke the letters granted to such public administrator, and to grant the same to such widow, next of kin, creditor, or creditors, as shall or may be entitled thereto: *Provided*, That application shall be made to the probate court of the proper county, by such person or persons, within six months after the letters shall have been granted to the public administrator, as

(5) Administration of an intestate's estate cannot be granted to the public administrator, except upon application of some party interested in the estate, nor unless it appears that there is no relative or creditor to whom administration can be committed. These facts must appear in the record; if they do not appear, the grant of administration is void. *Unknown heirs of Langworthy* v. *Baker*, 23 Ill. 490.

But in collateral proceedings it will be presumed, where the record is silent, that the probate court had satisfactory proof that there was no widow, next of kin or creditor, or that they had refused to administer. *Schnell* v. *The People*, 38 Ill. 390.

aforesaid, saving to such administrator, in all cases, all such sum or sums of money as may be due to him from such estate, on account of commissions and expenses due to and incurred by him, in the management of said estate.

SEC. 63. If any balance of any such intestate's estate as may at any time be committed to any public administrator as aforesaid, shall remain in the hands of such administrator, after all just debts and charges against such estate, shall have been fully paid, which shall have come to the knowledge of such public administrator for one year after the administration of such estate shall have been committed to him, as aforesaid, such administrator shall cause the amount thereof, with the name of the intestate, and the time of his or her decease, to be published in some one of the public newspapers printed in the territory, for eight weeks successively, notifying all persons having claims or demands against such estate, to exhibit the same, together with the evidence in support thereof, before the probate court in the proper county, within six months after the date of such notice, or that the same shall be forever barred; and if no such claim be presented for payment or distribution, within the said time of six months, as aforesaid, such balance shall be paid into the public treasury of said county, and the county shall be answerable for the same without interest, to such person or persons as shall thereafter appear to be legally entitled to the same, if any such shall ever appear.

SEC. 64. Upon the death of any person intestate, not leaving a widow, or next of kin, or creditors, within any county in this territory, it shall and may be lawful for the public administrator of the county wherein such person may have died, as aforesaid, or wherein the goods and chattels, rights and credits of such decedent shall be, in case such person shall have been a non-resident, to take such measures as he may deem proper, for the protecting and securing the property and effects of such intestate from waste or embezzlement, until administration thereon shall be granted to the person entitled thereto, as aforesaid, the expenses whereof shall be paid to such public administrator, upon the allowance of the probate court in preference to all other demands against such estate, funeral expenses excepted.

OF THE REMOVAL AND RESIGNATION OF EXECUTORS AND ADMINISTRATORS.

SEC. 65. If at any time after letters of administration have been granted, a will of the deceased shall be produced, and probate thereon granted according to law, such letters of administration shall be revoked and repealed, and letters testamentary, or of administration with will annexed, shall be granted in the same manner as if the former letters had not been obtained.

SEC. 66. In all cases where a will, testament, or codicil, shall have been proved and letters granted thereon, as aforesaid, and such will shall thereafter be set aside or annulled by due course of law, the letters granted thereon shall be revoked and repealed, and administration granted of the goods and chattels unadministered.

SEC. 67. The probate court shall have power to revoke and repeal all letters testamentary or of administration, granted to persons who shall become insane, lunatic or of unsound mind, habitual drunkards, who may be convicted of an infamous crime, who waste or mismanage the estate, or who conduct themselves in such a manner as to endanger their co-executors co-administrators, or securities; in all which cases, the court shall summon the person or persons charged to be in default, or disqualified, as aforesaid, to show cause why such revocation should not be made; and when made, the reason therefor shall be stated at large upon the record, and other letters granted to the next person or persons who shall, according to law, be entitled to the same.[6]

SEC. 68. Where the letters of one of several executors or administrators are revoked, or one or more of the executors or administrators shall die, or become disqualified, the probate court may, in its discretion, join others in their stead or place, and require additional bonds from such new administrator, or administrators, or the survivor or survivors of such as shall not have their powers revoked, shall proceed to manage the estate;[7] and in case the letters of all of them shall be revoked, or all of said executors or administrators shall depart this life before final settlement and distribution of the estate shall have been made, administration with the will annexed, or as the case may require, shall be granted to the person next entitled thereto, and in all cases where such executor or administrator shall have his letters revoked, as aforesaid, he shall nevertheless, be liable on his bond, to such subsequent administrator or administrators, or to any other person or persons aggrieved, for any mismanagement of the estate committed to his care, as aforesaid. And such subsequent administrator or administrators may have and maintain actions of trover, debt, detinue, account, and on the case, against such former executor or administrator, for all such goods, chattels, rights and credits as shall have come to the possession of him or her, and which shall be withheld, or may have been wasted, embezzled, or misapplied, and no satisfaction made for the same.[8]

(6) See *Foltz* v. *Prouse*, 17 Ill. 487. *Marsh* v. *The People*, 15 Ill. 287.

(7) See *Marsh* v. *The People*, 15 Ill. 287.

(8) As to the liability of the administrator removed or resigning, to his successor, see *Marsh* v. *The People*, 15 Ill. 287. *Short* v. *Johnson, Adm'r*, 25 Ill. 489. *Stose* v. *The People*, 25 Ill. 600.

SEC. 69. If any probate court shall grant letters testamentary or of administration of the estate of any person deceased, without taking good security for the same, as aforesaid, or if the security as taken, shall afterwards become insufficient, it shall be lawful for the said court on application of any person entitled to distribution, a creditor, or otherwise interested in such estate, to require such executor or administrator to give other sufficient security, and in default thereof, the letters testamentary or of administration, shall be revoked, and administration granted to the person entitled to the same, according to the rules hereinbefore prescribed in the case of administrators *de bonis non;* and all acts done and performed according to law, by the executor or administrator, whose letters, testamentary or of administration may be revoked as aforesaid, prior to such revocation, shall be valid and effectual.

SEC. 70. When securities for executors or administrators, or their representatives, may conceive themselves in danger of suffering by the mismanagement of such executors or administrators, and petition the probate court for relief, in writing, setting forth the cause of such apprehension, the said court shall examine such petition, and if the court shall deem the cause therein stated and set forth, sufficient to entitle such petitioner or petititioners to relief, if true, he shall summon such executor or administrator to show cause against such petition, and may thereupon dismiss the same, or direct such executor or administrator, in his discretion, either to give good counter-security, to save such petitioner or petitioners harmless, or to give new bond in the like penalty as the first, and such new bond shall have relation back to the time of granting letters testamentary, or of administration, and shall be as effectual in every respect, as if the same had been executed before such letters had been granted;[9] and upon refusal or neglect to give bond *de novo*, or counter-security, as aforesaid, the letters granted to such executor or administrator may be revoked, and letters of administration with the will annexed, or *de bonis non*, granted thereon as aforesaid.

SEC. 71. In all cases where a new bond shall be required to be given by an executor or administrator, as aforesaid, the formal part of the bond shall be as heretofore prescribed, with a condition thereto in the following form, to wit:

The condition of the above obligation is such, that whereas the above bounden A. B., executor of the last will and testament of J. K., deceased (or administrator of the goods and chattels,

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(9) When in pursuance of this section, on petition of the sureties, the administrator is required to, and does, execute a new bond which is approved, the sureties upon the original bond, are discharged of all liability for the acts of the administrator, past as well as future. *People* v. *Lott*, 27 Ill. 222.

rights and credits, of J. K., deceased), has heretofore executed a bond, payable to the people of the territory of Colorado, and conditioned for the discharge of his duties as executor (or administrator) as aforesaid, which said bond bears date on the —— day of ——, A. D. 18—, and whereas, by an order of the probate court, made on the —— day of ——, A. D. 18—, other bond and security has been required of the said executor (or administrator): Now, therefore, if the said executor (or administrator) shall well and truly have kept and performed, and shall well and truly keep and perform, the condition of the bond first given, as aforesaid, in all respects according to law, and shall in all respects have performed, and shall continue to perform, the duties of his office aforesaid, then this obligation to be void, otherwise to remain in full force and virtue.

Which bond shall be signed, sealed, attested and filed, in all other respects, as aforesaid.

SEC. 72. Courts of probate shall have power, and they are hereby required, to revoke letters of administration, in all cases, where the same have been or hereafter may be granted to any person upon the false and fraudulent pretence of being a creditor of the estate upon which administration has been or may be granted, or upon any other false pretence whatever.

SEC. 73. In all controversies arising under the preceding section, the court shall proceed to hear and determine the same, and if it shall appear that such letters were fraudulently obtained by such administrator, the court shall revoke the same, and give judgment against the administrator for all costs of suit, and issue execution therefor as in other cases.

SEC. 74. In all cases where any probate court shall hereafter revoke any letters of administration, it shall proceed to grant the same to such person or persons as may be entitled thereto.

SEC. 75. Any executor or executrix, administrator or administratrix, or guardian testamentary, or by appointment of a probate court, may resign in writing to the probate court having settlement or adjustment of his or her accounts, his, her or their office or offices; and when such resignation is accepted by such court, the person or persons so resigning shall be discharged from the further exercise of his, her or their office or offices: *Provided, always*, That the acceptance of such resignation shall be by a written order of said court, and shall not be construed to exonerate any executor or executrix, administrator or administratrix, or guardian, or his or their securities, from liabilities incurred previous to such acceptance; and no such resignation shall be accepted until such executor or executrix, administrator or administratrix, or guardian, shall have given notice of such intention by publication as required in cases of final settlement, and shall make and render a complete settlement of all matters in his hands as such administrator or administratrix, executor or executrix, or guardian, up to the time of his or her resignation, and shall deliver into court all evidences of title, property, papers, money, and choses in action, in his or her hands: *Provided, also*, That if the probate court shall enter an order dispensing with such notice, then, and in such case, no such notice shall be given.

OF THE ADMINISTRATION OF THE PERSONAL ESTATE.

SEC. 76. In every case wherein letters testamentary, of administration, or of collection, are granted, it shall be the duty of executor or administrator to make out a full and perfect inventory of all such real and personal estate pertaining to the estate of his testator or intestate, as shall come to his hands, possession, or knowledge, whether the same shall consist in lands, tenements, hereditaments, annuities, or rents, or in goods and chattels, rights and credits, describing such real estate by its numbers, or other reasonably certain description, and particularly specifying the amount and value thereof, and the title by which the same is held, if known, specifying, also, the amount of money on hand, the kind, number, or amount and value, of the several articles of personal property, the debts appearing to be due, or to become due, to such testator or intestate, the date of each contract, bond, bill, note or record by which the same are due, the rate of interest thereon, and whether such debt be sperate, doubtful or desperate, which said inventory shall be returned to the office of the probate judge within one month from the date of the said letters testamentary, or of administration, as aforesaid.

SEC. 77. On granting any letters testamentary, or of administration, as aforesaid, a warrant or warrants shall issue, under the seal of the court of probate, authorizing three persons of discretion, not related to the deceased, nor interested in the administration of the estate, to appraise the goods, chattels, and personal estate, of the deceased, known to them, or to be shown by the executor or administrator; which warrant shall be in the following form, to wit:

The people of the territory of Colorado, to A. B., C. D., and E. F., of the county of ——, and territory of Colorado, greeting: This is to authorize you, jointly, to appraise the goods, chattels, and personal estate, of J. K., late of the county of ——, and territory of Colorado, deceased, so far as the same shall come to your sight and knowledge, each of you having first taken the oath (or affirmation) hereto annexed, a certificate whereof you are to return, annexed to an appraisement-bill of said goods, chattels, and personal estate, by you appraised, in dollars and cents; and in the said bill of appraisement, you are to set down, in a column or columns opposite to each article appraised, the value thereof. Witness L. M., probate justice for the said county of ——, at his office in ——, this —— day of ——, A. D. 18—.

L. M., Probate Justice. [L. S.]

For said warrant, the probate justice shall receive the sum of twenty-five cents, and no more; and on the death, refusal to act, or neglect, of any such appraiser, another, in form as aforesaid, may forthwith issue in its stead.

SEC. 78. The appraisers, before they proceed to the appraisement of the estate, shall take the following oath (or affirmation), to be annexed to, or indorsed on, the warrant of appraisement, as aforesaid, before any person authorized to administer an oath:

You, and each of you, do solemnly swear (or affirm) that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate, of J. K., deceased, so far as the same shall come to your sight and knowledge, and that you will, in all respects, perform your duty as appraisers, to the best of your skill and judgment.

After which, the said appraisers shall proceed, as conveniently as may be, to the discharge of their duty, and shall set down each article, with the value thereof in dollars and cents, as aforesaid; all the valuations shall be set down, on the right hand side of the paper, in one or more columns, in figures, opposite to their respective articles of property, and the contents of each column shall be cast up, and set at the foot of each, respectively.

SEC. 79. When the bill of appraisement shall be completed, the appraisers shall certify the same, under their hands and seals, with a certificate of the oath (or affirmation) taken by them, thereunto annexed, and shall deliver the same into the hands of the executor or administrator, to be by him returned into the office of the probate judge, within one month from the date of his letters testamentary, or of administration.

SEC. 80. Inventories and bills of appraisement, and authenticated copies thereof, may be given in evidence, in any suit by or against the executor or administrator; but shall not be conclusive, for or against him, if any other testimony be given that the estate was really worth, or was *bona fide* sold for, more, or less, than the appraised value thereof.

SEC. 81. Each and every appraiser, appointed under this act, shall be entitled to the sum of three dollars per day, for each day's necessary attendance in making all such appraisements, and bills thereof, as aforesaid, to be allowed by the probate court, and paid, upon its order, by the executor or administrator, and charged to the account of the estate.

SEC. 82. When the estate of any testator, or intestate, shall have been appraised, and the same shall be ascertained to be entirely solvent, and free from debt or encumbrance, or where there shall be a sufficiency of money or assets in the hands of the executor to pay such debts, independent of the property mentioned in such inventory and bill of appraisement, it shall be lawful for the widow to make her election, whether she will take that part of the personal estate to which she may be entitled, by right or dower or otherwise, out of the articles mentioned in such bill of appraisement, according to the appraised value thereof, or the amount thereof in money, whenever the same shall be sold, and the money collected therefor; or she may take a part in property and a part in money, as she may prefer; and in all such cases, it shall be the duty of the executor or administrator, to notify the widow as soon as such appraisement shall be made, and to set apart for her such article or articles of property, not exceeding the amount to which she may be entitled, as she may prefer or select, within thirty days after written application shall be made for that purpose, by such widow; and if any such executor or administrator shall neglect or refuse to comply with the foregoing requisition, when application shall be made for that purpose, he shall forfeit and pay, for the use of such widow, the sum of twenty dollars per month, for each month's delay to set apart said property so selected, after the said term of thirty days shall have elapsed, to be recovered, in the name of the people of the territory of Colorado, for the use of such widow, in any court having jurisdiction of the same.[10]

SEC. 83. Whenever property of any kind, or assets, shall come to the possession or knowledge of any executor or administrator, which shall not have been mentioned and included in the inventory and bill of appraisement, as aforesaid, an account or inventory of the same shall be returned to the office of the probate judge, and a warrant shall issue for the appraisement of the same, if personal estate, in the same manner as provided in regard to original appraisements, within ten days thereafter.

SEC. 84. If any executor, or administrator, or other person interested in the estate, shall state upon oath to any probate court that he believes that any person has in his possession, or has concealed, or embezzled, any goods, chattels, moneys, or effects, books of accounts, papers, or any evidences of debt whatever, or titles to land, belonging to any deceased person, the court shall require such person to appear before it, by citation, and may examine him on oath, touching the same, and if such person shall refuse to answer such interrogatories as may be

(10) See Chap. XXIII. sections 11, 12, and notes.

propounded to him, by the court, or person interested as aforesaid, or shall refuse to deliver up such property or effects as aforesaid, upon requisition being made for that purpose, by an order of the said probate court, such court may commit such person to jail, until he shall comply with the order of the court therein.

SEC. 85. The executor or administrator shall, as soon as convenient, after making the inventory and appraisement, as hereinbefore directed, sell at public or private sale, as the probate court shall order and direct, all the goods and chattels of the testator or intestate, not reserved to the widow as aforesaid, and also excepting specific legacies and bequests, when the estate is sufficient to discharge the debts over and above such specific legacies and bequests, and in case of public sale, three weeks notice of the time and place of such sale shall be given by publication in some newspaper, or by posting notices in three public places in the county, as the court shall direct; and such sale may be made for cash or upon credit, as the probate court shall direct: *Provided*, That if such sale shall be made upon credit, security to be approved by the court, shall be taken by the executor or administrator from the purchaser or purchasers: *And provided, further*, That if any testator shall direct that his estate shall not be sold, the same shall be preserved in kind, and distributed accordingly, unless such sale should become absolutely necessary for the payment of the debts and charges against the estate of such testator.

SEC. 86. If any executor or administrator shall be of opinion that it would be of advantage to the estate of the testator or intestate to dispose of the crops growing at the time of his decease, the same shall be inventoried, appraised, and sold, at the same time, and in the same manner, as is directed in the preceding section; but if such executor or administrator shall believe that it would be of more advantage to the estate to grow and mature the same previous to such sale, he shall be authorized so to do; and the proceeds of such crop after deducting all necessary expenses for cultivating, gathering, and making sale of the same, shall be assets in the hands of such executor or administrator, and subject to the payment of debts and legacies, and to distribution, as aforesaid.

SEC. 87. Upon the suggestion of an executor or administrator that any claim, debt, or demand, whatever, belonging to the estate in his hands, and to be administered, is desperate for any cause, the probate court may order the same to be compounded or sold for such sum as the court may, in its discretion, determine upon: *Provided*, That no debt or demand shall be settled, compounded or sold, for a less sum of money than the face thereof, except in cases where the party from whom the sum is due is insolvent, or of doubtful solvency, which fact shall be ascertained and entered of record by the court before entering an order for the settlement, or sale, of such debt or demand.

SEC. 88. No executor or administrator shall, under any pretence whatever, remove any property whatsoever, wherewith such administrator or executor may be charged by virtue of his letters, beyond the limits of this territory; and in case any such executor or administrator shall remove such property, it shall be the duty of the probate court forthwith to revoke his letters, and letters of administration on said estate shall issue to the next person or persons entitled, as in other cases.

SEC. 89. In all public sales of property made in pursuance of this chapter, the executor or administrator may employ the necessary clerks, and a crier, to be allowed such compensation as the probate court may deem reasonable. All such sales shall be made between the hours of ten o'clock in the forenoon and five o'clock of the afternoon of each day.

SEC. 90. All executors and administrators shall, immediately after making such sales as aforesaid, make a bill of the sales of said estate, describing particularly each article of property sold, to whom sold, and at what price, which sale-bill, when made, and certified by the clerk and crier of such sale, as true and correct, shall be returned into the office of the probate justice, in the like manner as is required in the case of inventories and appraisements.

SEC. 91. The books of account of any deceased person shall be subject to the inspection of all persons interested therein.

SEC. 92. Executors and administrators shall be chargeable with so much of the estate, whether real, personal or mixed, or the proceeds thereof, of their testator or intestate, as they, after due and proper diligence, shall recover and receive.[11]

SEC. 93. If the widow commit waste in the lands and tenements, or the personal estate of the deceased, she shall be liable to an action by the heir or devisee, or his or her guardian, if of real estate, or by the executor or administrator, if of personal estate, and if she marry a second husband, he shall be answerable with her in damages for any waste committed by her, as aforesaid, before such second marriage, or by the husband himself after such marriage.

OF THE REAL ESTATE.

SEC. 94. In all cases where power is or may be given in any will, to sell or dispose of any real estate, or any interest therein, and the same be sold or disposed of in the manner and by the persons appointed in such will, the sales shall be good and

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(11) See *Rowan* v. *Kirkpatrick*, 14 Ill. 13.

valid; and when one or more executors shall depart this life before such sales be made, the survivor or survivors shall have the same power, and their sales shall be good and valid, as though they all joined in such sale.[12]

SEC. 95. Whenever any testator shall, by his last will, direct that his real estate, or any of it, be sold, or otherwise disposed of, for the payment of his debts, or for any other purpose, and no executor be named therein, or if the executor named therein refuse such office, or be removed, or die, the administrator with the will annexed, or *de bonis non*, may sell, convey, and dispose of, such real estate, in accordance with the provisions of such will, in the same manner, and with like effect, as the executor named in such will, and duly qualified, might have done.

SEC. 96. Whenever after inventory and appraisement thereof, as herein provided, it shall appear that the personal estate of any decedent is insufficient to discharge the just debts allowed against his or her estate, and the legacies charged thereon, resort may be had to the real estate, and the same may be sold, mortgaged, or leased, by the administrator, or in cases where no power to that end is contained in the will, by the executor, upon the order of the court, as follows:[13]

SEC. 97. The executor or administrator shall present to the probate court out of which letters testamentary or of administration issued, or to the district court of the same county, or of the county to which such county is attached for judicial purposes, his petition, setting forth the amount and value of the personal estate, according to the inventory and appraisement thereof, and if sale has been made of such personal estate, the amount received from such sale, the amount of debts and claims allowed against the estate, and the amount still existing and not allowed, so far as the same may be known, the amount of legacies, if any, for the payment of which resort must be had to the real estate, and describing particularly the whole of the real estate whereof the decedent died seized, or in or to which he or she, at the time of his or her decease had any interest, claim or right, the nature of his or her claim, right or title, the nature and value of the several parcels of such real estate, respectively, and if the same or any thereof are encumbered, the nature and amount of such encumbrance, and pray the aid of the court in the premises. To such petition the widow, or husband, and

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(12) As to the power of one executor to make sale of lands under an appointment in the will, where his co-executor renounces, and as to what is the proper evidence of such renunciation, see *Clinefelter* v. *Ayres*, 16 Ill. 330. *Pahlman, Exr.* v. *Smith*, 23 Ill. 452. *Wardwell* v. *McDowell*, 31 Ill. 364.

(13) The real estate descends to the heir, subject to a lien in favor of creditors, for the payment of their debts; but this lien will be lost, unless steps are taken by the creditors to effect a sale of the land, within a reasonable time after the death. *McCoy* v. *Morrow*, 18 Ill. 519. *Unknown Heirs of Langworthy* v. *Baker*, 23 Ill. 490. *VanSyckle* v. *Richardson*, 13 Ill. 174.

heirs at law, of such decedent, and the devisees of such real estate, if the same, or any thereof, be devised in the will of the decedent, and the guardians of such of them as may be minors, shall be made defendants.

SEC. 98. Upon the filing of such petition, a summons shall issue against the defendants therein named, directed to the sheriff of the county, requiring the defendants to appear and answer the petition, upon the return-day of such summons.

SEC. 99. Every such summons shall be made returnable on the first day of the term of the court next succeeding the date thereof.

SEC. 100. If there are several defendants residing in different counties, a summons shall issue to each of such counties, as in other like cases.

SEC. 101. Service of such summons shall be by reading to each of the defendants therein named; in the case of minor defendants, service of summons may be made upon the guardian only.

SEC. 102. If the executor or administrator shall file with the clerk of such district court, or the probate judge, according as such petition may be in the district or probate court, an affidavit that any defendant resides, or hath gone, out of the territory, or cannot be found, so that process cannot be served upon him, such judge or clerk shall cause to be published for four weeks successively, in some daily or weekly newspaper printed within the county wherein the petition is pending, or if there be no newspaper printed within such county, then in some newspaper printed in the territory, a notice, to such defendant, of the filing of such petition, the time at which the writ is returnable, or, if such publication be made after the return-day of the writ, the time to which such petition is continued, and requiring such defendant to appear and answer the petition on such return-day, or on such day to which the petition is continued; but such affidavit and notice shall not dispense with the issuing of summons, or the usual effort to make service thereof.

SEC. 103. If such summons be not served at least ten days before the return-day thereof, or if, in cases where notice by publication is permitted by the last preceding section, the first publication of such notice, be not at least sixty days before the day named therein for the defendant's appearance, the cause shall stand continued until the next succeeding term of the court: *alias* summons may issue, from time to time, as to any defendant not served.

SEC. 104. The form of proceeding upon such petition shall, as nearly as practicable, conform to the proceedings of courts of chancery, in like cases, and the issue shall be found, heard, and determined, as provided by the chapter concerning practice in chancery: *Provided*, That trial by jury shall in no such case be allowed: *And provided, further*, That no defendant shall be allowed to put in issue the decedent's title or interest to or in the lands named in the petition.

SEC. 105. If it shall appear that any defendant is a minor, and hath no guardian resident in this territory, or if such guardian, if any, fail or refuse to appear to resist such petition, the court shall appoint a guardian *ad litem*, to such minor, to appear in his or her behalf, and resist such petition.

SEC. 106. Any person interested in the estate as a creditor or otherwise, and not made defendant, may appear and answer such petition, and show cause against the prayer thereof, at any time before final decree.

SEC. 107. Upon the hearing of the cause, upon the issue or issues formed, or where the petition may be taken for confessed, it shall be the duty of the court to hear proofs touching the matters alleged in the petition, or in issue by the pleadings subsequent thereto; and if by such proofs it shall appear that the personal estate will be insufficient to discharge the just debts and claims allowed against the estate, and the legacies charged thereon, and expenses of administration, the court shall determine, as nearly as may be, the amount of such deficiency, and may thereupon direct that the real estate, or such portion thereof as may be necessary, be sold, or leased, by the executor or administrator, or that the executor or administrator raise money for the discharge of such debts and legacies, by mortgage of all or any part of such real estate; or that any part of the real estate be sold, and that the residue or any thereof, be either mortgaged, or leased, according as may seem most for the interest of all persons interested in the estate, due regard being had to the rights of all.

SEC. 108. If the court shall direct a sale of such real estate, or any part thereof, the order shall specify the part to be sold, and whether such sale shall be for cash, or upon credit, and if upon credit, the length thereof, and the rate of interest to be paid by the purchaser pending the same; if any such sale be upon a credit, the executor or administrator shall, before the delivery of a conveyance, take from the purchaser or purchasers, a mortgage of the premises sold, to secure the due payment of the purchase-money, unless the order of the court direct that other security be taken in lieu thereof.

SEC. 109. If the court shall direct that the executor or administrator raise money by mortgage of any of the real estate, the order shall specify a rate of interest not exceeding which, and a period for not less than which, such loan shall be made.

SEC. 110. If the court shall direct the executor or administrator to lease the real estate, or any part thereof, the order shall specify for what length of time and upon what rents and conditions the lease may be made: *Provided*, That no such lease shall be made for a term exceeding five years.

SEC. 111. The court may direct in the alternative, that if the executor or administrator cannot, upon mortgage of the real estate, borrow the sum of money necessary, at a rate of interest, and for a length of time to be named, or cannot lease the same at the rents and upon the conditions named, that then a sale thereof, or of any part thereof, shall be made.

SEC. 112. Every sale of the real estate of any decedent, in pursuance of this chapter, shall be made at such place, and upon such notice, as the court may direct; but no such sale shall be valid, unless the time, place, and terms thereof, be first advertised for at least twenty days, in the same manner as required in the case of sales of real estate by the sheriff, upon execution; nor unless such sale be in conformity with the order of the court.

SEC. 113. In every such case, the conveyance, mortgage, or lease, by the executor or administrator, shall recite, in substance, the order of the court; and every such conveyance, mortgage, or lease, made in conformity with the order of the court, shall have the same effect to convey, encumber, and demise the estate, which the decedent, in his or her lifetime, had in the premises, as if made by such decedent, in his or her lifetime; but no final conveyance of any estate so sold, shall be made until the approval of the proceedings of the executor or administrator, by the court, as hereinafter mentioned.

SEC. 114. At the next term of the court succeeding any such sale, mortgage, or leasing, the executor or administrator shall present to the court, a report of his proceedings in the premises, accompanying such report in case a sale hath been made, with the advertisement thereof, and proof of the publication of the same, and also with his affidavit that he did not directly or indirectly, purchase any part of the real estate sold, and hath no interest, direct or indirect, in any such purchase.

SEC. 115. If such report be approved by the court, the executor or administrator shall execute his conveyance of the premises sold, to the purchaser or purchasers thereof, as herein before provided.

SEC. 116. If such report of sale be not approved, the sale shall be void, and the court may order a re-sale of the same premises.

SEC. 117. All moneys arising from any such sale, mortgaging, or leasing, of the real estate, shall be assets in the hands of the executor or administrator for the payment of debts and legacies, and shall be administered, under the direction of the probate court, in the same manner as moneys arising from the sale of personal property.

SEC. 118. If any decedent shall, before his death, have purchased real estate, and shall die before completing the payment therefor, intestate, or without devising the same, or providing by will for the payment of the purchase money thereon due, or to accrue, and the completion of such payment would be beneficial to the heirs or legatees of the deceased, and not injurious to creditors, the executor or administrator may, with the approval of the probate court, complete such payment out of the proceeds of the personal estate.

SEC. 119. Such real estate shall, whether payment therefor be made from the personal estate or not, be disposed of in the same manner as other real estate.

SEC. 120. The court may, in such case, if it should seem most advantageous to the persons interested in the estate, direct that the executor or administrator, relinquish the interest and estate of the deceased, upon such terms as he may, with the approval of the court, agree upon.

SEC. 121. If any decedent shall have left lands encumbered by mortgage, judgment, execution, sale, or other lien, and shall not have devised the same, or provided by will for the redemption thereof, the probate court shall have power, if it shall appear to be for the interest of the heirs, legatees, and creditors, to order the executor or administrator, to redeem the same out of the proceeds of the personal estate, or upon petition as provided by sections ninety-seven to one hundred and sixteen of this chapter, may direct that other lands be sold to redeem the same.

SEC. 122. When any executor or administrator shall remove from this territory, or resign, or die, after the sale of any real estate of his testator or intestate, in pursuance hereof, and before executing a deed therefor, or after an order for the sale, mortgage, or leasing of any such real estate, hath been made in pursuance hereof, and before the final execution of such order, the court may direct that the survivor or successor, of such executor or administrator, execute such conveyance, mortgage or lease, or complete the execution of such order.

SEC. 123. When the mortgagee of any lands or tenements shall die, leaving minor heirs, the executors or administrators of such mortgagee shall be, and they are hereby authorized, on receiving the amount due the estate of such deceased mortgagee, to release to the mortgagor, the legal title of the said mortgaged premises, and such deed of release shall be valid.

SEC. 124. Whenever any estate is found to be insolvent, it shall be so entered of record, and the court of probate may make all necessary orders to coerce the executor or administrator to make seasonable application for the sale of the real estate, or for authority to mortgage or lease the same in conformity herewith.

OF THE ALLOWANCE OF DEMANDS AND THE SETTLEMENT OF ESTATES.

SEC. 125. All demands against the estate of any testator or intestate, shall be divided into classes in manner following, to wit: *First*, All funeral and other expenses attending the last sickness, shall compose the first class. *Second*, All expenses of proving the will and taking out letters testamentary or of administration and settlement of the estate, and the physician's bill in the last illness of the deceased, shall compose the second class. *Third*, Where any executor, administrator, or guardian has received money as such, his executor or administrator shall pay out of his estate the amount thus received and not accounted for, which shall compose the third class.[14] *Fourth*, All other debts and demands of whatsoever kind without regard to quality or dignity, which shall be exhibited within one year from the granting of letters as aforesaid, shall compose the fourth class.[15] *Provided*, That whenever it may be necessary so to do, in order to preserve the estate, real or personal, for the benefit of the heirs, devisees, and creditors, the executor or administrator may pay any taxes due thereon, to the territory, or any city, county or town, and shall be allowed such payment in his account; and all demands not exhibited within one year as aforesaid, shall be forever barred, unless such creditor shall find other estate of the deceased, not inventoried or accounted for by the executor or administrator; in which case his claim shall be paid, *pro rata*, out of such subsequently discovered estate;[16] saving however, to *femmes covert*, persons of unsound mind, or impris-

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(14) Where the husband of an administratrix collects money pertaining to the estate, and dies without accounting therefor, the claim against his estate, in favor of the heirs of the first decedent, will be placed in the third class. *Davis Adm'r.* v. *Harkness*, 1 Gilm. 181.

(15) Judgment creditors, when the judgment is not a lien, stand upon the same footing with simple contract creditors. *Paschall* v. *Hamilton*, 4 Gilm. 285. *Turney* v. *Gates*, 12 Ill. 142.

But the lien of a judgment, execution, chattel mortgage, or pledge, executed or recovered in the lifetime of a decedent, is not taken away by his death. *Dodge* v. *Mack*, 22 Ill. 76.

(16) Claims not established within the statutory period, are barred, even though no term is fixed upon by the administrator for the adjudication of claims. *The People* v. *White*, 11 Ill. 349.

The heir cannot rely upon the limitation. *Ryan* v. *Jones*, 15 Ill. 5.

A failure to present the claim or bring an action, within the period limited, does not work an absolute bar to the action; the only effect of such delay, is to bar the plaintiff from participating in the property inventoried. *Thorn* v. *Watson, Admr.* 5 Gilm. 28. *Peacock* v. *Haven, Admr.* 22 Ill. 25. *Judy* v. *Kelly*, 11 Ill. 211.

It makes no difference that the creditor, at the time of bringing his action has not discovered property not inventoried; he is entitled to share in the proceeds of property theretofore, or thereafter discovered, either by himself or any other creditor. *Bradford* v. *Jones*, 17 Ill. 94.

But as to this, and as to the form of the judgment in such case, see *Ryan* v. *Jones*, 15 Ill. 5. See also, *Sloo* v. *Pool*, 15 Ill. 47.

It is said in *Wingate* v. *Pool*, that the creditor's demand must not only be filed, but must be aloned, or beyond seas,[17] the term of one year after their respective disabilities be removed, to exhibit their claim.

SEC. 126. It shall be the duty of each and every administrator or executor, to fix on a certain day or days at a term o the probate court within six months from the time of his being qualified as such administrator or executor, for the settling and adjusting all claims against such decedent, and give notice thereof by publication for four successive weeks, prior thereto in some daily or weekly newspaper, printed within the county wherein such administration is had, or if there be no such newspaper, by posting such notice in five public places within such county, requesting all persons having claims and demands against the estate, to present the same to the court, on the day or days named in such notice for adjustment.

SEC. 127. All persons having claims against the estate, may present the same on the day named in such notice, and the court may proceed to hear and determine the same, or, if objection be made thereto by the executor, administrator, or any party interested in the estate, or if cause be shown by the party presenting such claim, may continue the hearing thereof; if no objection be made to any such claim, by the administrator, widow guardian, heirs,[18] or others, interested in said estate, the claimant shall be permitted to swear that such claim is just and unpaid, after allowing all just credits; and, if objections be made to such claim, the account shall be adjudicated, as is required in other cases: *Provided*, That estates shall be answerable for the costs, on the claims filed at or before said term, but not after.

SEC. 128. Persons having claims against estates, upon giving the executor or administrator ten days' notice of the time they intend to present the same, with a copy of the account, or instrument of writing, whereon such claim is founded, may exhibit such claims against the estate, at any term of the court subsequent to the issuing of letters testamentary or of administration.

SEC. 129. No person making a claim against the estate of any testator or intestate, shall be permitted to prove the same by his or her own oath, except in cases specified in section one hun-

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lowed, within the statutory period, to entitle him to his distributive share in the estate inventoried. 25 Ill. 118.

(17) The term, "beyond seas," construed to mean beyond the limits of the jurisdiction of the United States. *Mason, Exr.* v. *Johnson*, 24 Ill. 162.

(18) The heir having the right to be present, and contest the justice of claims presented against the estate, the adjudication of the court allowing the claim is *prima facie* evidence of its justice as against him, although he may not in fact have attended at the hearing. *Mason* v. *Bair*, 33 Ill. 206.

Citing *Hopkins* v. *McCann*, 19 Ill. 113. *Stone* v. *Wood*, 16 Ill. 177.

The allowance is conclusive upon the personal representative. *Propst* v. *Meadows*, 13 Ill. 157.

dred and twenty-seven, hereof; but said court may, in its discretion, before giving judgment against any executor or administrator, require the claimant to make oath that such claim is just and unpaid: *Provided*, That the amount of such judgment shall not be increased upon the testimony of the claimant. *And provided further*, That except as provided in section one hundred and twenty-seven of this chapter, every demand shall be proven in the same manner and by like evidence, as would be required in like cases before the district court.

SEC. 130. Any creditor whose debt or claim against the estate is not due, may nevertheless, present the same for allowance and settlement; and the same shall be allowed to the extent of the sum due thereon for principal and interest, at the date of such allowance.

SEC. 131. The manner of exhibiting claims against estates, shall be by filing in the probate court, the account, or instrument of writing, or an exemplification of the record, whereon such claim is founded.[19] Formal pleading shall, in no case, be required; but the issue shall be formed, heard, and determined, in the same manner as in actions before justices of the peace.

SEC. 132. When any executor or administrator shall have any demand against his testator's or intestate's estate, he shall be required to file his demand with the probate court as other persons, and the court shall appoint some discreet person to appear and manage the defence for the estate, and, upon the final hearing, said court shall allow said demand, or such part thereof as shall be legally established, or reject the same, as to said court shall appear just; should an executor or administrator appeal in such case, the probate court shall appoint some person to defend as aforesaid.

SEC. 133. When a claim shall be filed or suit brought against any such executor or administrator, and it shall appear on trial that such claimant or plaintiff is indebted to such executor or administrator, as such, it shall be lawful for such probate court to give judgment therefor, and issue an execution, or other final process.

SEC. 134. The probate court shall make an entry of record of every demand allowed against any estate, and shall file all papers relating to the same; such entry of allowance shall have the force and effect of a judgment.

SEC. 135. The probate court shall class all demands allowed

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(19) The filing of the claim at the term appointed by the administrator, unless it be regularly continued from term to term, will not be deemed such a commencement of an action as to bar the running of the general statute of limitation. *Reitzell v. Miller*, 25 Ill. 67.

If the claims presented at the term fixed by the administrator are not then adjudicated, they must be continued by a formal order of the court, to a subsequent term, or the claimant will be required to give notice to the administrator of the time when he will again present it. *Propst v. Meadows*, 13 Ill. 166.

against any estate, at the time of the allowance thereof, and such demands shall be paid in their order, commencing with the first class, and when the estate is insufficient to pay the whole of the demands, such demands, in any one class, shall be paid *pro rata*, whether the same shall be due by judgment, writing obligatory, or otherwise, except in such cases as shall be herein excepted; and when any executor or administrator shall pay any claim before the same is allowed as aforesaid, said court shall require such executor or administrator to establish the validity of such claim, by such evidence as is required in other case before the same is classed, and he credited therewith.

SEC. 136. Creditors, who may bring their actions in the district court, at any time within one year from the issuing of letters testamentary, or of administration shall share in the proceeds of the estate in the same manner as if such demand had been exhibited in the probate court, within the same time.

SEC. 137. Upon the recovery of judgment at law in any court other than the probate court, against any executor or administrator, for a demand due from his testator or intestate, no execution shall be issued thereon, but the party recovering such judgment, shall cause a transcript of the record of the judgment entry to be filed in the probate court, and the same shall be classed and paid as other demands are.

SEC. 138. All executors and administrators shall exhibit accounts of their administration, for settlement, to the court from which the letters testamentary or of administration, were obtained, at the first term thereof, which shall happen after the expiration of six months after the date of the letters aforesaid, and, in like manner, every two months thereafter, or sooner if required, until the duties of their administration are fully completed. Every such account shall set forth the amount of money received by the executor or administrator to the date thereof, with the sources from which the several amounts thereof were received, and all sums of money paid out, with the proper vouchers for such payments.

SEC. 139. Upon each and every settlement of the accounts of any executor or administrator, it shall be the duty of the court to ascertain the whole amount of moneys which shall have come into the hands of such executor or administrator, belonging to the estate of the deceased, and the whole amount of debts established against such estate, and if there be not sufficient to pay the whole of the debts, the moneys aforesaid, or such part thereof as the court may direct, shall be apportioned among the several creditors, *pro rata*, according to their several rights as established herein; and thereupon the court shall make an order directing such executor or administrator to pay out such moneys according to such apportionment, and the court, upon each and every settlement, shall proceed in like manner, until the whole debts be paid, or the assets exhausted; but no dividend shall, in such case, be ordered, which may probably exceed the *pro rata* amount due such several creditors, upon the allowance of all existing demands against the estate; and the court may, in its discretion, refuse to direct any payment or distribution, until the expiration of one year from the issuing of letters.

SEC. 140. If any executor or administrator shall fail or refuse to pay over any moneys or dividend, to any person entitled thereto, in pursuance of the order of the court, lawfully made, within thirty days after demand made for such moneys or dividend, the court upon application made, shall attach such delinquent executor or administrator, and may cause him to be imprisoned until he shall comply with the order aforesaid, or until such delinquent is discharged by due course of law;[20] and, moreover, such failure or refusal on the part of such executor or administrator, shall be deemed and taken in law to amount to a *devastavit;* and an action upon such executor's or administrator's bond, and against him and his securities, may be forthwith instituted, and the failure to pay such moneys or dividend, shall be sufficient breach to authorize a recovery thereon.

SEC. 141. Whenever it shall appear that there are sufficient assets to satisfy all legacies and all demands against the estate, the court shall order the payment of all legacies mentioned in the will of the testator, the specific legacies being first satisfied.

SEC. 142. After the payment of all debts allowed against the estate of any decedent, and all legacies declared in his or her will, and the expenses of administration, the court shall direct the executor or administrator to distribute the surplus remaining in his hands, among the heirs and next of kin to the deceased, as provided by law, or by the last will of any testator.

SEC. 143. Where any heir of any intestate has received money, goods, chattels, or real estate, if the amount so received shall be charged to such heir by said intestate, the same shall be taken into computation in making distribution of the estate, upon being brought into *hotchpot*, as aforesaid: *Provided*, That an heir who has received from the intestate more than his share, shall in no case be required to refund.

SEC. 144. Executors and administrators shall not be compelled to pay legatees or distributees, until bond and security be given by such legatees or distributees, to refund a due proportion of any debt which may afterwards appear against

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(20) The court has no power to render judgment against the administrator, in favor of the creditor. *Piggott* v. *Ramey*, 1 Scam. 146.

the estate, and the costs attending the recovery thereof; such bond shall be made payable to such executor or administrator, and shall be for his indemnity, and filed in the probate court.

SEC. 145. When at any time after the payment of legacies or distributive shares, it shall become necessary that the same or any part thereof be refunded, for the payment of debts, it shall be the duty of the court on application made, to apportion the same, among the several legatees or distributees, according to the amount received by them, except the specific legacies, which shall in no case be required to be refunded, unless the residue be insufficient to satisfy the debts; and if any distributee or legatee shall refuse to refund according to the order of the court made as aforesaid, within sixty days thereafter, upon demand made, such refusal shall be deemed a breach of the bond given to the executor or administrator as aforesaid, and an action may be instituted thereon, to the use of party entitled, and in all cases where there may be no bond, an action of debt may be maintained against such distributee or legatee, and the order of the court of probate shall be evidence of the same.

SEC. 146. In all cases where a widow shall renounce all benefit under the will, and the legacies and bequests therein contained, to other persons, shall, in consequence thereof, become increased or diminished in amount, quantity, or value, it shall be the duty of the court, upon the settlement of such estate, to abate from or add to such legacies and bequests, in such manner as to equalize the loss sustained or advantage derived thereby, in a ratio corresponding to the several amounts of such legacies and bequests, according to the intrinsic value of each.

SEC. 147. If any executor or administrator desire to make final settlement of his administration, he shall give notice by publication for four weeks successively, in some daily or weekly newspaper printed in the county wherein administration is had, or if there be no such newspaper, then by posting such notice in four of the most public places in such county, of the term and day of the court on which he will present his accounts for final settlement.

SEC. 148. If it shall appear that such notice hath been duly published, the court may, upon the day named therein, hear and examine the accounts of the executor or administrator, which shall be rendered in the same manner as at other settlements, and the objections of any parties in interest who may object thereto, and if it shall appear that the executor or administrator hath fully and faithfully administered all the estate of the decedent, which hath come to his hands, according to the provisions of this chapter, the court may approve such accounts and discharge the executor or administrator, but no such discharge shall in any manner affect the right of any creditor, heir, or devisee, to bring an action upon the bond of such executor or administrator, for any breach of the condition thereof.

SEC. 149. Executors and administrators shall be allowed, as a compensation for their trouble, a sum not exceeding six per cent. on the whole amount of personal estate, and not exceeding three per cent. on the money arising from the sales or letting of land, with such additional allowances for costs and charges in collecting and defending the claims of the estate, and disposing of the same, as shall be reasonable, to be allowed and paid as other expenses of administration.

OF ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

SEC. 150. No executor or administrator, or security for any executor or administrator, shall be chargeable beyond the assets of a testator or intestate, by reason of any omission or mistake in pleading, or false pleading, of such executor or administrator.

SEC. 151. All bonds which may at any time be given by any executor or administrator, either with or without the will annexed, or *de bonis non*, to collect, or public administrator, may be put in suit, and prosecuted against all or any one or more of the obligors named therein, in the name of the people of the territory of Colorado, for the use of any person or persons who may have been injured by reason of the neglect or improper conduct of any such executor or administrator as aforesaid, and such bond shall not become void on the recovery thereon, but may be sued upon, from time to time, until the whole penalty shall be recovered: *Provided*, That the person or persons for whose use the same may at any time be prosecuted shall be liable for all costs which may accrue in the prosecution of the same; and certified copies of all such bonds, under the seal of the probate court, shall be received as evidence to authorize such recovery in any court of law or equity, having jurisdiction thereof in this territory.

SEC. 152. If any executor or administrator shall fail to comply with the provisions of this chapter, or shall fail to comply with any or all the covenants in his bond, an action may be forthwith instituted upon such bond, and the failure aforesaid shall be sufficient breach to authorize a recovery, in the same manner as though a *devastavit* had been previously established against such executor or administrator.

SEC. 153. Where there are two or more executors or administrators of any estate, and any one of them takes all or a greater part of such estate, and refuses to pay the debts of the testator or intestate, or refuses to account with the other executors or administrators, in such case, the executor or administrator so aggrieved may have his action of account, or suit in equity, against such delinquent executor or administrator, and recover such proportionate share of said estate as shall belong to him; and every executor, being a residuary legatee, may have an action of account, or suit in equity, against his co-executor, and recover his part of the estate in his hands; and any other legatee may have the like remedy against the executors: *Provided*, That before any action shall be commenced for legacies, as aforesaid, the court of probate shall make an order directing them to be paid.

SEC. 154. All actions at law whatsoever, save and except actions on the case for slander, or libel, or trespass for injuries done to the person, and actions brought for the recovery of real estate, shall survive to and against executors and administrators.

GENERAL PROVISIONS.

SEC. 155. All provisions in this chapter relative to an executor or administrator, shall apply and extend to an executrix or administratrix, or executors or administrators, and *vice versa*, unless otherwise expressly provided, and whenever any party in the singular number, or a male party, is mentioned, the words shall apply to a female, or two or more having a joint interest, so far as the rule can be with propriety applied, and so far as it is not otherwise directed. The words "will" or "last will," as used in this or any other chapter, shall be construed to include all testaments and codicils.

SEC. 156. In all cases, in which, by the division of any county in this territory, the administrator or executor to whom letters may have been granted by the probate court of such county, shall, by such division, be placed beyond the limits of the county in which such letters may have been granted, then, and in all such cases the probate court of such county shall be authorized to proceed and settle the estate upon which letters of administration may have been so granted, in the same manner as if no such division had occurred.

SEC. 157. The administration of the whole of the estate of any decedent, within this territory, shall be had in the county out of the probate court of which letters testamentary or of administration may issue in pursuance of this chapter.

SEC. 158. Any affidavit required to be made by this chapter, may be made and sworn to before any officer authorized by the law of this territory to administer oaths, or by any officer of any state, territory, or district, of the United States, having like authority by the law of the state, territory, or district, where he resides; the fact of such authority, and the official capacity of such officer, to be proved and established in the same manner as required in the case of deeds of lands made and acknowledged beyond this territory.

SEC. 159. If any executor, administrator, or collector, fail to render his accounts of his administration, at the time and in the manner required by law, the probate court shall have power to attach such executor or administrator, for such default, and may proceed against him as for a contempt; in any such case, the court may impose a fine upon such executor or administrator, so in default, not exceeding three hundred dollars; and whenever any such fine is imposed, it shall be a part of the judgment of the court, that such executor or administrator stand committed to the common jail of the county, until he or she will comply with the order of the court. This section shall also apply to the guardians of infants, and conservators of insane persons.

Prior Statutes Repealed. An act concerning wills, executors and administrators. Approved November 8, 1861. Laws 1861, p. 398.

An act amendatory of an act concerning wills, executors and administrators. Approved August 15, 1862. Laws 1862, p. 97.

An act to amend an act entitled An act concerning wills, executors, and administrators. Approved March 11, 1864. Laws 1864, p. 151.

STATUTES REPEALED.

And be it further enacted by the Council and House of Representatives of Colorado Territory:

That the foregoing several chapters, entitled as follows, to wit:

Abatement; Advertisements; Aliens; Amendments and Jeofails; Arbitrations and Awards; Attachments; Attorneys at Law; Auctions; Auditor and Treasurer.

Bills of Exchange and Promissory Notes.

Capital; Chancery; Chattel Mortgages; Churches; Common-Law; Conveyances; Corporations; Costs; Counties; Counties and County Officers; Criminal Code.

Descents and Distributions; District Courts; District Attorney; Divorce and Alimony.

Ejectment; Elections; Estrays; Evidence and Depositions.

Fees and Salaries; Fences and Inclosures; Flour Inspector;

Forcible Entry and Detainer; Fords; Frauds and Perjuries; Fugitives from Justice.

Game; Guardian and Ward.

Habeas Corpus.

Imprisonment for Debt; Injunctions; Interest; Irrigation of Lands.

Jails; Joint Rights and Obligations; Judgments and Executions; Jurors; Justices and Constables.

Legislative Assembly; Limitations; Lunatics.

Mandamus; Marks and Brands; Marriages; Married Women; Militia; Mining-Claims.

Notaries.

Oaths and Affirmations; Official Bonds.

Partition; Paupers; Powder-Houses; Practice; Probate Court; Public Lands.

Quo Warranto.

Replevin; Revenue; Roads and Highways.

Schools; Seal; Statutes; Stock; Supreme Court; Surveys.

Toll-Roads and Bridges; Towns and Cities; Traitors; Trout-Fish.

University.

Venue.

Weights and Measures; Wills; Executors and Administrators; together with such other statutes of a general and public nature (and not hereby or heretofore repealed), as are hereinafter mentioned, shall be published in one volume and entitled, The Revised Statutes of Colorado; that said chapters and statutes shall be arranged and printed in alphabetical order, and appropriately numbered, in consecutive numbers; and all statutes passed at the present session of the legislative assembly, which cannot be conveniently and properly allotted to any of the titles herein, may be printed at the end thereof, under the title of Miscellaneous Laws; that to each of said chapters composing the Revised Statutes, shall be prefixed a brief abstract of the contents thereof, arranged and numbered by sections; and, at the foot of each chapter, shall be attached a note of all prior statutes, with the date of approval thereof, and a note of the judicial decisions upon such statutes as have been adopted from other territories and states of the United States; that all acts and parts of acts, of a general and public nature, passed at the present session of the legislative assembly, which are not contained in the foregoing chapters, shall be published therewith, under their appropriate titles; and all acts and parts of acts of a general and public nature, passed previous to the present session of the legislative assembly, and which are not repealed by, nor incorporated in, the foregoing, and whereon depend titles heretofore accrued, or which are necessary to preserve the meaning of, and perfect the law of this territory, shall, in like manner, be published in connection with the foregoing chapters, under their appropriate titles; that all acts and parts of acts passed at the present session of the legislative assembly, which are not of a public and general nature, shall be printed and bound separately from the Revised Statutes aforesaid.

And be it further enacted, That the following several acts, approved on the fourteenth day of September, 1861, and entitled as follows:

An act in relation to district courts.

Also the following several acts, approved on the twenty-eighth day of September, 1861, and entitled as follows:

An act to designate the style of the enacting clause of the legislative acts of Colorado territory.

Also the act approved on the eleventh day of October, 1861, and entitled as follows:

An act adopting the common-law of England.

Also the following several acts, approved on the twenty-fourth day of October, 1861, and entitled as follows:

An act relative to notaries public.

An act to prescribe the rate of interest.

An act concerning warrants of cities and towns.

An act concerning venue.

An act concerning amendments and jeofails.

An act concerning practice in chancery.

An act regulating the mode of proceeding in replevin.

An act concerning costs.

An act concerning attorneys and counsellors at law.

Also the following several acts, approved on the twenty-eighth day of October, 1861, and entitled as follows:

An act to authorize the appointment of commissioners of deeds.

Also the following several acts approved on the twenty-ninth day of October, 1861, and entitled as follows:

An act regulating the mode of proceedings in attachments in the district courts.

Also the following several acts approved on the thirty-first day of October, 1861, and entitled as follows:

An act to provide for the appointment of three commissioners in each county in this territory.

An act concerning bills of exchange and promissory notes.

An act to provide for the expenses of Colorado territory.

An act to establish the office of county attorney, and to define his duties.

An act concerning evidence and depositions.

An act concerning justices of the peace and constables.

An act concerning fraudulent conveyances and contracts relative to real and personal property.

An act concerning descents and distributions.

Also the following several acts approved on the first day of November, 1861, and entitled as follows:

An act to define county boundaries and to locate county seats in Colorado territory.

An act concerning actions by persons holding lots, lands or mining-claims, except as against the United States.

Also the several acts approved November fourth, 1861, and severally entitled as follows:

An act concerning aliens.

An act to provide for recording contracts relating to lands and for other purposes.

An act concerning lost goods and estrays.

An act concerning oaths and affirmations.

An act concerning judgments and executions.

Also the several acts approved November fifth, 1861, and severally entitled as follows:

An act concerning conveyances of real estate.

An act concerning imprisonment for debt.

An act to protect and regulate the irrigation of lands.

An act concerning practice in civil cases.

An act concerning criminal jurisprudence.

An act to prevent and punish resistance to officers.

An act concerning injunctions.

An act to provide for stay of procedure on foreign indebtedness.

An act to provide for limitations of actions.

Also the several acts approved November sixth, 1861, and severally entitled as follows:

An act concerning licenses.

An act relating to counties and county officers.

An act to prevent ranchmen and stable-keepers from using stock left with them, without the consent of the owners.

An act concerning the construction of statutes.

An act concerning county jails.

An act to establish a territorial library and cabinet.

An act concerning joint rights and obligations.

An act concerning partitions of real estate.

An act for the protection of trout-fish.

An act to protect the mining-claims and property of soldiers.

An act relating to the commitment of prisoners.

An act concerning legal advertisements.

An act to organize and establish the treasury department.

An act to create a lien in favor of ranchmen and others.

An act supplementary to an act entitled An act concerning judgments and executions.

An act concerning guardian and ward.

Also the several acts approved November 7, 1861, and severally entitled as follows:

An act providing for the collection of revenue.

An act to change the name of Guadaloupe county to Conejos county.

An act concerning line fence.

Article I. of an act to establish the university of Colorado.

An act concerning fugitives from justice.

An act establishing the mode of locating and changing county seats.

An act to protect the rights of married women.

An act to establish the common-school system.

An act relating to the legislative assembly.

An act concerning lode-claims.

An act declaratory of the rights of occupants of the public domain.

An act concerning proceedings in cases of *quo warranto.*

An act regulating the proceedings in writs of *habeas corpus.*

An act concerning divorces and alimony.

An act to regulate proceedings in writs of *mandamus.*

An act concerning dower.

An act concerning ejectments.

An act concerning arbitrations and awards.

An act concerning probate courts.

Also the several acts approved November 8, 1861, and severally entitled as follows:

An act to provide for the increase and time of the meeting of the legislature.

An act concerning clerks of the courts.

An act regulating the fees of officers, jurors, and witnesses.

An act concerning the district and supreme courts.

An act concerning wills, executors and administrators.

Also the act approved July 26, 1862, and entitled as follows:

An act to authorize county clerks to take acknowledgments of deeds.

Also the act approved July 30, 1862, and entitled:

An act concerning official bonds of receivers and masters in chancery.

Also the act approved August 8, 1862, and entitled as follows:

An act relating to fencing.

Also the act approved August 9, 1862, and entitled as follows:

An act to amend an act entitled An act concerning jurors.

Also the several acts approved August 11, 1862, and severally entitled as follows:

An act amendatory of an act entitled An act concerning ejectments.

An act authorizing the dismissal of causes in vacation.

Also the act approved August 13, 1862, and entitled as follows:

An act to invest religious societies with certain powers of bodies corporate.

Also the several acts approved August 14, 1862, and severally entitled as follows:

An act to prevent the carrying concealed, deadly weapons in the cities and towns of this territory.

An act to authorize the appointment of county commissioners in special cases.

Also the several acts approved August 15, 1862, and severally entitled as follows:

An act to establish the rates of charging for the publication of legal documents.

An act to regulate the sale of horses, mules and cattle at auction, in Colorado territory.

An act requiring clerks of the district court to give bond.

An act to enable road, ditch, manufacturing, and other companies, to become bodies corporate.

An act to prevent the sale of intoxicating liquors to soldiers.

An act to apportion the territory of Colorado into council and representative districts.

An act to enable citizens of this territory, in the military service of the United States, to vote.

An act relating to fords.

An act amendatory of an act entitled An act concerning justices of the peace, and constables.

An act to amend an act concerning licenses.

An act amendatory of an act entitled An act concerning license.

An act concerning chattel mortgages.

An act to amend an act entitled An act relating to notaries public.

An act supplemental to an act providing for the collection of the revenue.

An act to establish and regulate territorial roads.

An act to create a fund for the benefit of schools.

An act to revive certain judgments of the miners' and other courts by *scire facias*.

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An act relating to marriages.

An act to amend an act entitled An act providing for the collection of the revenue.

Also the several acts approved March 11, 1864, and severally entitled as follows:

An act relating to the sufficiency of the security of official bonds, and for other purposes.

An act entitled An act to amend an act to enable, road, ditch, manufacturing, and other companies to become bodies corporate.

An act to amend An act relative to counties and county officers.

An act relative to contagious diseases amongst cattle and other animals.

An act to amend an act entitled An act regulating the fees of officers, jurors and witnesses.

An act concerning fences.

An act to exempt soldiers from service by publication in suits at law.

An act to define the extent of mineral and quartz lodes.

An act concerning roads and highways.

An act for the protection of roads.

An act providing for the collection of taxes from non-resident stock owners.

An act to amend an act entitled An act to organize the treasury department.

An act prescribing rules and regulations for the execution of the trust arising under the act of congress, entitled An act for the relief of citizens of towns upon lands of the United States, under certain circumstances.

An act concerning weights and measures.

An act to amend an act entitled An act concerning wills, executors and administrators, approved November 8, 1861.

An act to prevent speculation in territorial and county scrip.

Also the several acts approved February 8, 1865, and severally entitled as follows:

An act to amend an act entitled An act requiring clerks of district courts to give bond, approved August 15, 1862.

An act to amend an act entitled An act regulating the mode of proceeding in attachments in the district courts, approved October 29, 1861.

An act to amend an act entitled an act entitled An act to amend an act to enable road, ditch, manufacturing and other companies to become bodies corporate, approved March 11, 1864.

An act to create the office of flour inspector.

An act to amend an act entitled An act concerning judgments and executions, approved November 4, 1861.

An act relating to negotiable instruments, promissory notes and contracts.

An act concerning practice in the supreme court.

An act to restrain sheep, hogs and stallions from running at large.

Also the several acts approved February 9, 1865, and severally entitled as follows:

An act to authorize the county commissioners of the several counties in Colorado territory to procure copies of the original field-notes and plats of surveys of all lands surveyed in their respective counties.

An act to repeal so much of an act entitled An act to establish a territorial library and cabinet, approved November 6, 1861, and to create the territorial treasurer librarian of this territory.

Also the several acts approved February 10, 1865, and severally entitled as follows:

An act to prohibit persons holding office under municipal corporations from entering into contracts with such corporations, and for other purposes.

An act to divide the territory of Colorado into judicial districts, and to provide for the holding of courts in the same.

An act amendatory and supplemental to an act entitled An act regulating elections, approved November 6, 1861, and repealing an act entitled An act to enable citizens of this territory in the military service of the United States to vote, approved March 11, 1865.

An act fixing the compensation of members of the legislative assembly of the territory of Colorado, and amendatory to the several acts heretofore passed, regulating the fees of officers, jurors and witnesses.

An act to encourage the formation and equipment of volunteer companies.

An act to organize the militia of Colorado territory.

An act providing for the support of paupers.

An act in relation to powder-houses and magazines.

An act to amend an act entitled An act to establish the common-school system.

An act to prevent gamblers or keepers of gambling-houses from serving as jurors.

An act to amend an act entitled An act to apportion the territory of Colorado into council and representative districts, approved August 15, 1862.

Also the several acts approved January 20, 1866, and entitled as follows:

An act to suppress gambling and gambling-houses.

Also the act approved January 27, 1866, and entitled An act supplementary to an act concerning roads and highways, approved March 11, 1864.

Also the several acts approved February 5, 1866, and entitled as follows:

An act to amend an act entitled An act concerning attorneys and counsellors at law, approved October 24, 1861.

Also the several acts approved February 6, 1866, and severally entitled as follows:

An act to change and locate the boundaries of Fremont county.

An act to survey and locate portions of the boundary line between the counties of Pueblo, Huerfano and Fremont.

Also the several acts approved February 9, 1866, and entitled as follows:

An act to establish the county of Las Animas, and locate the boundaries thereof.

An act to prescribe the time of holding the supreme court of Colorado territory, and to assign districts to the judges thereof.

An act to change the time of meeting of the legislature of Colorado territory.

Also the act approved December 29, 1866, and entitled An act to establish the county of Saguache, Colorado territory, and to define the boundary lines thereof.

Also the several acts approved January 8, 1867, and severally entitled as follows:

An act to provide additional compensation to the justices of the supreme court of Colorado territory.

An act to amend An act concerning criminal jurisprudence, approved November 5, 1861.

An act requiring ditch-owners to bridge ditches where they cross public travelled roads.

An act to legalize the action of the board of county commissioners of Arapahoe county in relation to a certain road.

Also the several acts approved January 10, 1867, and severally entitled as follows:

An act requiring foreign corporations doing business in this territory, to furnish proofs of their incorporation.

An act in relation to territorial roads.

An act to amend an act entitled An act to establish the common-school system.

An act to prohibit the introduction of Texas cattle into Colorado territory.

Also the several acts approved January 11, 1867, and severally entitled as follows:

An act to regulate private corporations in Jefferson and Clear Creek counties.

An act to locate the county-seat of Conejos county, Colorado territory.

An act to amend an act entitled An act to divide the territory of Colorado into judicial districts, and to provide for the holding of courts in the same, approved February 10, 1865, and for other purposes.

An act amendatory of an act entitled An act to divide the territory of Colorado into judicial districts, and to provide for the holding of courts in the same, approved February 10, 1865.

An act to regulate the fees of officers.

An act to preserve game in the territory of Colorado.

An act to reduce the several acts concerning jurors into one act, and to amend the same.

An act to amend an act entitled An act concerning justices of the peace and constables, approved October 31, 1861.

An act to exempt firemen from serving on juries.

An act creating a lien in favor of mechanics, in certain cases.

An act creating a lien in favor of miners, in certain cases.

An act to amend an act entitled An act providing for the support of paupers, approved February 10, 1865.

An act amendatory of An act providing for the collection of the revenue, approved November 7, 1861,—be and the same are hereby repealed.

And be it further enacted, That in addition to the before-enumerated statutes, all acts and parts of acts passed previous to the present session of the legislative assembly, the provisions whereof are repugnant to the provisions of any of the several chapters of the Revised Statutes, as passed at this session, are also repealed: *Provided,* That the repeal of such acts and parts of acts, or any of them, shall not be construed to abate any indictment, information, or other criminal prosecution pending or to be pending thereunder, while in force, nor to take away any penalty accrued or to accrue thereunder, nor to divest or impair any right acquired while the same remained in force; nor shall the repeal heretofore of any act or part of act passed by the legislative assembly, be construed to divest or impair any right accrued thereunder, or to divest or impair any remedy given thereby to enforce any contract made and executed while the act or part of act so repealed remained in force; but as to all rights and titles accrued, and all acts done and completed while the same remained in force, all such acts and parts of acts, heretofore repealed, shall be construed to be and remain in force, notwithstanding any such repeal.

And be it further enacted, That where any portion of the foregoing several chapters is in conflict with any act or part of act passed, or which may be passed, at this session of the legislative assembly, the act or part of act so passed, or to be passed, at this session, shall prevail, and shall be deemed to repeal the chapter, article, or section or part thereof hereinbefore contained, wherewith it is in conflict; and all chapters and parts thereof hereinbefore contained, so repealed, shall be omitted in the printed edition of the Revised Statutes.

And be it further enacted, That the person appointed to superintend the printing of the Revised Statutes shall have authority to correct manifest clerical errors and omissions in the enrolment of the laws, without the use of brackets.

This act and the several chapters hereinbefore contained shall take effect and be in force on and after the first day of July, A. D. 1868, where not otherwise by any of the said chapters provided.

Approved January 10, 1868.

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ERRATA.

Page 86, 14th line, 6th word, for “bail” read *bill.*
“ 90, 22d line, for “capitol” read *capital.*
“ 112, 31st line, 4th word, for “approved” read *proved.*
“ 112, 38th line, 5th word, for “upon” read *open.*
“ 113, 4th line, last word, for “executed” read *may be executed.*
“ 120, 36th line, 2d word, for “full” read *full paid.*
“ 150, 43d line, 2d word, for “if” read *of.*
“ 151, 7th line, last word, for “reserve” read *receive.*
“ 151, 23d line, 2d word, for “rest” read *vest.*
“ 201, 30th line, last word, for “councillors” read *counsellors.*
“ 202, 7th line, 2d word, for “councillors” read *counsellors.*
“ 250, 20th line, 7th word, for “too” read *two.*
“ 273, 38th line, 16th word, for “priority” read *privity.*
“ 274, 12th line, 9th word, for “actual” read *casual.*
“ 286, 8th line, 8th word, for “voters” read *votes.*
“ 345, 22d line, for “1868” read 1867.
“ 364, 44th, line, 8th word, for “first” read *ten.*
“ 385, 2d line, 11th word, for “suit” read *writ.*
“ 403, 24th line, 11th word, for “when” read *upon.*
“ 493, 44th line, last word, for “protested” read *protected.*
“ 500, 43d line, 13th word, for “suit” read *writ.*
“ 501, 5th line, 7th word, for “services” read *service.*
“ 487, between the words “county” and “commissioners,” insert *clerk, it shall be the duty of the.*